

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1160

ORIGINAL

In The
United States Court of Appeals
For The Second Circuit

UNITED STATES OF AMERICA,

Appellee,

-against-

WILLIAM M. RUFFIN,

Defendant-Appellant.

B
P/S

*On Appeal from a Judgment of Conviction of the United States
District Court for the Southern District of New York.*

APPENDIX FOR APPELLANT

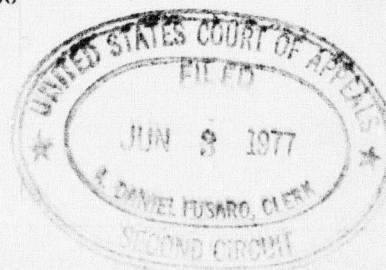
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Attorneys for Defendant-Appellant

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10774

LUTZ APPELLATE PRINTERS, INC.

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South River, N.J. New York, N.Y. Philadelphia, Pa. Washington, D.C.
(201)257-6850 (212) 563-2121 (215) 563-5587 (202) 783-7288

PAGINATION AS IN ORIGINAL COPY

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DOCKET ENTRIES (pp. 1a-3a)

76CR 429

RUFFIN, WILLIAM M.

(LAST FIRST MIDDLE)

U.S. TITLE NO. 26-7201; 7203

OFFENSES CHARGED
Did file false income tax returns 11

U.S. MAG. CASE NO.

DATE RELEASE

☐ AMT ☐ Fugitive
☐ Denied ☐ Set ☐ Pers. Recog
☐ \$ ☐ 000 ☐ PDA
☐ Date ☐ conditions
☐ 10% Deposit
☐ Bail Not Made ☐ Surety Bond
☐ Status Changed (See Docket) ☐ Collateral
☐ 3rd ☐ Ptry Cust ☐ Other

SUPERSEDING COUNTS

ARREST

INDICTMENT

ARRAIGNMENT

TRIAL

SENTENCE

6-30-76

7/9/76

12/13/76

12/13/76

12/29/76

3/3/77

Disposition of Charge
☐ Convicted
☐ Acquitted
☐ Dismissed
☐ On Government Motion

MAGISTRATE

INITIAL/NO

OUTCOME

☐ DISMISSED

HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT

HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW

ATTORNEYS

Walker & Bailey
270 Lenox Avenue, New York, 10027
Lehigh 4-6300

Peter Goldman

6-30-76
7/9/76

Before NEAHER, J - Indictment filed
Before PRATT, J. - Case called. Counsel present with Deft. Deft arraigned & after being advised of his rights & on his own behalf enters a plea of not guilty Bail cont'd (P.R. Bond \$5,000.00) Adjd to 7/29/76 at 1:30 p.m. for status conference & to fix a trial date

7/12/76 By PRATT, - Specified methods of Bail release & General & special conditions filed.

7/22/76 76 M 1433 filed in Criminal file .

7-29-76 Notice of appearance filed.

7-29-76 Defts demand for Discovery and Inspection pursuant to FRCP Rules 6(e) and 16(a)(1)(C) filed.

7-30-76 Notice of readiness for trial filed

8-17-76 Before PRATT, J - case called - deft & atty present - adjd to 9-3-76 at 9:30 am -for status conference and criminal motions.

7/23/76 Before PRATT, J. - Case called. Deft and counsel present. Defts application for extension of bail limits to Puerto

EXCLUDABLE DELAY

OPPOSITE THE APPLICABLE DOCKET NUMBER, SHOW IN SECTION V ANY OCCURRENCE OF EXCLUDABLE DELAY PER 16 USC § 3161(h)

DATE	IV. PROCEEDINGS (continued)	PAGE TWO	V. EXCLUDABLE DELAY	For Penal Code
	DOCUMENT NO.	Interval Section (a)	Start Date End Date (b)	Total Days (c)
	Rico from 8.24.76 to 9.9.76 - Adjd to 8/17/76 at 9:30 for Status Conference. Deft waives his right to a speedy trial.			
8-30-76	Notice of motion for Bill of Particulars, etc. (ret. 9-3-76)			
9/1/76	Supplemental affidavit of Lawrence R. Bailey, Jr. filed, and sent to Chambers.			
9/3/76	Before PRATT, J. - Case called. Deft & Counsel present. Defts motions granted. Trial date fixed for 12/13/76 at 10:00 a.m.			
12-2-76	Stenographers transcript filed dated 9-3-76			
12-6-76	Before Pratt, J.- Case Called. Deft. & Counsel present. Trial to commence following Civil Case Call -vs- Triple B. Trucking.			
12-8-76	Letter received from Chambers written by Counsel for the Deft. to Judge Pratt dated December 7, 1976 filed and returned to Chambers as directed.			
12-14-76	Before Pratt, J.- Case Called. Deft. & Counsel present. Trial resumed. Trial to continued on 12-15-76 at 9:30 A.M.			
12/9/76	Before PRATT, J. - Case called. Deft & Counsel present. Hearing ordered and begun. Hearing concluded. Motion to suppress - motion denied.			
12/13/76	Before PRATT, J- Case called. Deft & Counsel present. Trial ordered and begun. Jurors selected and sworn. Govt opens, deft opens. Trial to continue on 12/14/76 at 10:00 a.m.			
12-15-76	Before Pratt, J.- Case Called. Deft. & Counsel present. Trial resumed. Govt. rests. Deft's. motion for dismissal argued and denied. Trial to continue to 12-16-76 at 9:30 A.M.			
12-16-76	Before Pratt, J.- Case Called. Deft. & Counsel present. Trial resumed. Govt. rests. Deft. rests. Govt. sums up. Trial to continue on 12-17-76 at 9:30 A.M.			
12/20/76	Stenographers transcripts dated 12/9/76, 12/13/76, 12/14/76, 12/16/76 filed.			
12-20-76	By PRATT, J.-Order of sustenance filed.(lunch)			
12-20-76	By PRATT, J.-Order of sustenance filed.(dinner)			
12-20-76	Before PRATT, J.-Case called-Deft and counsel present- Trial resumed-Both sides sum up-Judge charges Jury-Marshal's sworn-Alternates discharged-Jury retires to deliberate-Jury returns and renders verdict of guilty on cts 4,7,8 and not guilty on cts 2 & 3.Court orders mistrial on remaining cts. 1,5,6,9,10,11-Trial concluded-Jurors discharged-Case adjd without date for sentencing.			
1-6-77	Notice of motion 1-20-77 for a judgment of acquittal filed,			
DATE	FILE NO.	DOCKET NO.	C.D. NUMBER	PAGE

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U. S. vs

WILLIAM M. RUFFIN

76-Cr-429

Yr.

Docket No.

Def.

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
1-21-77	By PRATT, J.- Memo and order denying defts motion for a judgment of acquittal or a new trial filed. copies mailed.				
1-26-77	Sten. transcript dtd. 12-15-76 filed.				
3-3-77	Before Pratt, J.- case called- Defendant and counsel present. Defendant sentenced on each of counts 4, 7 & 8 to: imprisonment for a period of 3 years. Defendant to serve in a jail-type institution for a period of 2 months. Execution of the remainder of the sentence is suspended and the defendant is placed on probation for the balance of the 3 year term. Probationary period to commence upon the defendant's release from confinement in prison. Defendant is also fined a sum of \$5,000.00. Sentences to run concurrently on each of counts 4, 7 & 8. If defendant files a Notice of Appeal within one week, then execution of sentence is stayed pending the outcome of the appeal. Bail continued. Remaining counts to remain open pending outcome of appeal.				
3-3-77	Judgment and commitment filed. Certified copies to US Marshal, Probation and US Atty.				
3-3-77	Notice of appeal filed - docket entries and duplicate of Notice forwarded to the c of a				
3-23-77	Scheduling Order filed that the record on appeal be docketed on or before 4-5-77				

JUDGMENT

FILED

76 CR 429

MAY 48

U.S. DISTRICT COURT, EASTERN DISTRICT OF NEW YORK

JUDGMENT AND PROBATION COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date

TIME A.M.

P.M.

MONTH

DAY

3

3

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant do have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

CORA WALKER

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,☐ NOLO CONTENDERE,☐ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged☒ GUILTY. on counts 4, 7 and 8.

FINDING & JUDGMENT

Defendant has been convicted as charged of the offense(s) of violating T-26, U.S.C., Sec. 720 that on or about April 15, 1973, in the Eastern Dist. of New York, defendant did wilfully and knowingly attempt to evade and defeat a part of income tax due and owing by him to the U.S.A. by filing and to be filed a false and fraudulent income tax return and the defense or about November 30, 1971 and 1972, did wilfully and knowingly evade and defeat a large part of the income taxes due and owing to the U.S.A. by filing and to be filed a false and fraudulent income tax return and the defense of Rugore Associates, the defendant being the President of said stockholder, by mailing a false and fraudulent income tax return.

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant be committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

SENTENCE OR PROBATION ORDER

Defendant sentenced on each of counts 4, 7 and 8 to imprisonment for a period of 3 years. Defendant to serve in a jail-type institution for a period of 2 months. Execution of the remainder of the sentence is suspended and the defendant is placed on probation for the balance of the 3 year term. Probationary period to commence upon the defendant's release from confinement in prison. Defendant is also fined a sum of \$5,000.00. Sentences to run concurrently on each of counts 4, 7 or 8. If defendant files a Notice of Appeal within one week, then the execution of the sentence is stayed pending the outcome of the appeal.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, or terminate probation at any time. The Court may also extend the probation period for a maximum probation period of five years permitted by law, may have a warrant issued for the defendant's arrest if the defendant fails to appear for a violation occurring during the probation period.

The court orders commitment to the custody of the Attorney General and recommends

COMMITMENT RECOMMENDATION

SIGNED BY

U.S. District Judge

date 3/4/77

TSP:PMG:am
P. 0761,633

INDICTMENT

5a

(Filed June 30, 1976) (pp. 5a-13a)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA

- against -

WILLIAM M. HUFFIN,

Defendant.

----- X

THE GRAND JURY CHARGES:

INDICTMENT

Cr. No. 76SR429
(T. 26, U.S.C., §7201 and
T. 26, U.S.C., §7203)
6/30/76

COUNT 1

On or about the 13th day of July, 1970, in the Eastern District of New York, the defendant WILLIAM M. HUFFIN, a resident of Brooklyn, New York, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him to the United States of America for the calendar year 1969, by filing and causing to be filed with the Director, Internal Revenue Service Center, North Atlantic Region, at Andover, Massachusetts, a false and fraudulent income tax return wherein he stated that his taxable income for the said calendar year was the sum of Eight Thousand Three Hundred and Six Dollars and Eighty Two Cents (\$8,306.82) and that the amount of tax due and owing thereon was the sum of One Thousand Seven Hundred Thirty Four Dollars and Thirty Eight Cents (\$1,734.38), whereas, he then and there well knew his taxable income for the said calendar year was the sum of Twenty-Five Thousand Nine Hundred and Forty-Two Dollars and Sixty-Four Cents (\$25,942.64), upon which said taxable income he owed to the United States of America an income tax of Eight Thousand Four Hundred Forty Two Dollars and Eighty Seven Cents (\$8,442.67).

In violation of Section 7201, Internal Revenue Code; 26 U.S.C., Section 7201.

COUNT II

6a

On or about the 28th day of June, 1971, in the Eastern District of New York, the defendant WILLIAM M. RUFFIN, a resident of Brooklyn, New York, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him to the United States of America for the calendar year 1970, by filing and causing to be filed with the Director, Internal Revenue Service Center, North Atlantic Region, at Andover, Massachusetts, a false and fraudulent income tax return wherein he stated that his taxable income for the said calendar year was the sum of Twelve Thousand Fifty Three Dollars and Seventy Seven Cents (\$12,053.77) and that the amount of tax due and owing thereon was the sum of Two Thousand Six Hundred Twenty Dollars and Fifty Nine Cents (\$2,620.59), whereas, he then and there well knew, his taxable income for the said calendar year was the sum of Thirty Five Thousand Three Hundred Seventy Dollars and Thirty Two Cents (\$35,370.32), upon which said taxable income he owed to the United States of America an income tax of Twelve Thousand Three Hundred Fifty Nine Dollars and Nineteen Cents (\$12,359.19). In violation of Section 7201, Internal Revenue Code; 26 U.S.C., Section 7201.

COUNT III

On or about the 7th day of June, 1972, in the Eastern District of New York, the defendant WILLIAM M. RUFFIN, a resident of Brooklyn, New York, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him to the United States of America for the calendar year 1971, by filing and causing

to be filed with the Director, Internal Revenue Service Center, North Atlantic Region, at Andover, Massachusetts, a false and fraudulent income tax return wherein he stated that his taxable income for the said calendar year was the sum of Twelve Thousand One Hundred Forty Dollars and Thirty Two Cents (\$12,140.32) and that the amount of tax due and owing thereon was the sum of Two Thousand Four Hundred Seventy Seven Dollars and Eighty Nine Cents (\$2,477.89), whereas, he then and there well knew, his taxable income for the said calendar year was the sum of Twenty Five Thousand Seven Hundred Forty Seven Dollars and Fifty Four Cents, (\$25,747.54), upon which said taxable income he owed to the United States of America an income tax of Six Thousand Eight Hundred Eighty Four Dollars and Seven Cents (\$6,884.07). In violation of Section 7201, Internal Revenue Code; 26 U.S.C., Section 7201.

COUNT IV

On or about the 15th day of April, 1973, in the Eastern District of New York, the defendant WILLIAM M. RUFFIN, a resident of Brooklyn, New York, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him to the United States of America for the calendar year 1972, by filing and causing to be filed with the Director, Internal Revenue Service Center, North Atlantic Region, at Andover, Massachusetts a false and fraudulent income tax return wherein he stated that his taxable income for the said calendar year was the sum of Thirteen Thousand Two Hundred Three Dollars and Sixteen Cents (\$13,203.16), and that the

amount of tax due and owing thereon was the sum of Two Thousand Seven Hundred Sixty Four Dollars and Eighty Five Cents, (\$2,764.85), whereas, he then and there well knew, his taxable income for the said calendar year was the sum of Forty One Thousand Thirty One Dollars and Seventy Two Cents (\$41,031.72), upon which said taxable income he owed to the United States of America an income tax of Thirteen Thousand Seven Hundred Eighty Nine Dollars and Sixty Nine Cents (\$13,789.69). In violation of Section 7201, Internal Revenue Code; 26 U.S.C., Section 7201.

COUNT V

On or about the 15th day of April, 1974, in the Eastern District of New York, the defendant WILLIAM M. RUFFIN, a resident of New York, New York, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him to the United States of America for the calendar year 1973, by filing and causing to be filed with the Director, Internal Revenue Service Center, North Atlantic Region, at Holtsville, New York, a false and fraudulent income tax return wherein he stated that his taxable income for the said calendar year was the sum of Seventeen Thousand Three Hundred Fifty Four Dollars and Ninety Four Cents (\$17,354.94), and that the amount of tax due and owing thereon was the sum of Three Thousand Nine Hundred Sixty Dollars and Three Cents (\$3,960.03) whereas, he then and there well knew, his taxable income for the said calendar year was the sum of Thirty Six Thousand Nine Hundred Forty Five Dollars and Four Cents (\$36,945.04), upon which said taxable income he owed to the United States of America an income tax

of Eleven Thousand Seven Hundred Thirty Three Dollars and Sixty Two Cents (\$11,733.62). In violation of Section 7201, Internal Revenue Code; 26 U.S.C., Section 7201.

COUNT VI

On or about the 30th day of April, 1975, in the Eastern District of New York, the defendant WILLIAM M. RUFFIN, a resident of New York, New York, did wilfully and knowingly attempt to evade and defeat a large part of the income tax due and owing by him to the United States of America for the calendar year 1974, by filing and causing to be filed with the Director, Internal Revenue Service Center, North Atlantic Region, at Holtsville, New York a false and fraudulent income tax return wherein he stated that his taxable income for the said calendar year was the sum of Twenty Thousand Nine Hundred Sixty Two Dollars and Eighty Three Cents (\$20,962.83) and that the amount of tax due and owing thereon was the sum of Five Thousand One Hundred Thirty Six Dollars and Ninety Nine Cents (\$5,136.99), whereas, he then and there well knew, his taxable income for the said calendar year was the sum of Thirty Seven Thousand Eight Hundred Six Dollars and Sixty Nine Cents, (\$37,806.69), upon which said taxable income he owed to the United States of America an income tax of Twelve Thousand One Hundred Forty Seven Dollars and Twenty One Cents (\$12,147.21). In violation of Section 7201, Internal Revenue Code; 26 U.S.C., Section 7201.

COUNT VII

On or about the 30th day of November, 1971, in the Eastern District of New York, the defendant WILLIAM M. RUFFIN who was the President and sole stockholder of Rugore Associates, Inc., a corporation, did wilfully and knowingly attempt to evade and defeat a large part of the income taxes due and owing by the said corporation to the United States of America for the calendar year 1970, by preparing and causing to be prepared, by signing and causing to be signed, and by mailing and causing to be mailed a false and fraudulent income tax return, which was filed with the Internal Revenue Service, wherein he stated that there was no taxable income for the corporation for the said calendar year and that the total amount of tax due thereon was the sum of NONE, whereas, he then and there well knew, the taxable income of the corporation for the said calendar year was the sum of Thirty Two Thousand Eight Hundred Forty Two Dollars and Sixty Two Cents (\$32,842.62), upon which taxable income the corporation owed to the United States of America a total tax of Nine Thousand Four Hundred Ninety Six Dollars and Seven Cents (\$9,496.07). In violation of Section 7201, Internal Revenue Code; 26 U.S.C., Section 7201.

COUNT VIII

That on or about the 30th day of November, 1972, in the Eastern District of New York, WILLIAM M. RUFFIN who was the President and sole stockholder of Rugore Associate, Inc., a corporation, did wilfully and knowingly attempt to evade and defeat a large part of the income taxes due and

owing by the said corporation to the United States of America for the calendar year 1971, by preparing and causing to be prepared, by signing and causing to be signed, by mailing and causing to be mailed, a false and fraudulent income tax return, which was filed with the Internal Revenue Service, wherein he stated that there was no taxable income for the corporation for the said calendar year and that the total amount of tax due thereon was the sum of NONE, whereas, as he then and there well knew, the taxable income of the corporation for the said calendar year was the sum of Seventeen Thousand Seven Hundred Ninety Two Dollars and Fifty Nine Cents (\$17,792.59), upon which taxable income the corporation owed to the United States of America a total tax of Three Thousand Nine Hundred Fourteen Dollars and Thirty Seven Cents (\$3,914.37). In violation of Section 7201, Internal Revenue Code; 26 U.S.C., Section 7201.

COUNT IX

That during the calendar year 1972, WILLIAM M. RUFFIN, was the President and sole stockholder of Rugere Associates, Inc., a corporation not expressly exempt from tax, with its principal place of business at 21 Irving Place, Brooklyn, New York, and by reason of such facts WILLIAM M. RUFFIN was required by law, after the close of the calendar year 1972 and on or before March 15, 1973, for and on behalf of the said corporation to make an income tax return to the District Director of Internal Revenue

for the Internal Revenue District of Brooklyn, at 35 Tillary Street, Brooklyn, New York, in the Eastern District of New York, or to the Director, Internal Revenue Service Center North Atlantic Region, Holtsville, New York, stating specifically the items of the corporation's gross income and the deductions and credits allowed by law; that well knowing all of the foregoing facts, did wilfully and knowingly fail to make said return to said District Director of Internal Revenue, to the said Director of the Internal Revenue Service Center, or to any other proper officer of the United States. In violation of Section 7203, Internal Revenue Code; 26 U.S.C., Section 7203.

COUNT X

That during the calendar year 1973, WILLIAM M. RUFFIN was the President and sole stockholder of Rugere Associate, Inc., a corporation not expressly exempt from tax, with its principal place of business at 21 Irving Place, Brooklyn, New York, and by reason of such facts WILLIAM M. RUFFIN was required by law, after the close of the calendar year 1973 and on or before March 15, 1974, for and on behalf of the said corporation to make an income tax return to the District of Internal Revenue for the Internal Revenue District of Brooklyn, at 35 Tillary Street, Brooklyn, New York, in the Eastern District of New York, or to the Director, Internal Revenue Service Center North Atlantic Region, Holtsville, New York, stating specifically the items of the corporation's gross income and the deductions and credits allowed by law; that well knowing all of the foregoing facts, did wilfully and knowingly fail to make

said return to said District Director of Internal Revenue, to the said Director of the Internal Revenue Service Center, or to any other proper officer of the United States. In violation of Section 7203, Internal Revenue Code; 26 U.S.C., Section 7203.

COUNT XI

That during the calendar year of 1974, WILLIAM M. RUFFIN was the President and sole stockholder of Rugore Associates, Inc., a corporation not expressly exempt from tax, with its principal place of business at 21 Irving Place, Brooklyn, New York, and by reason of such facts WILLIAM M. RUFFIN was required by law, after the close of the calendar year 1974 and on or before March 15, 1975, for and on behalf of the said corporation to make an income tax return to the District Director of Internal Revenue for the Internal Revenue for the Internal Revenue District of Brooklyn, at 35 Tillary Street, Brooklyn, New York, in the Eastern District of New York or to the Director, Internal Revenue Service Center North Atlantic Region, Holtsville, New York stating specifically the items of the corporation's gross income and the deductions and credits allowed by law; that well knowing all of the foregoing facts, did wilfully and knowingly fail to make said return to said District Director of Internal Revenue, to the said Director of the Internal Revenue Service Center, or to any other proper officer of the United States. In violation of Section 7203, Internal Revenue Code; Section 7203.

A TRUE BILL.



FOREMAN

UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

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SENTENCING MINUTES BEFORE HON. GEORGE C. PRATT
DATED MARCH 3, 1977 (pp. 14a-25a)
UNITED STATES DISTRICT COURT

14a

EASTERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA

-against-

76 CR 429

WILLIAM M. RUFFIN,

Defendant.

-----x

United States Courthouse
Brooklyn, New York

March 3, 1977
2:00 o'clock P.M.

B e f o r e :

HONORABLE GEORGE C. PRATT, U.S.D.J.

MAURICE DAVIS
ACTING OFFICIAL COURT REPORTER

1
2 A p p e a r a n c e s :
3

4 DAVID G. TRAGER, ESQ.
5 United States Attorney
for the Eastern District of New York

6 BY: STANLEY MARCUS, ESQ.
7 Assistant U.S. Attorney

8 CORA T. WALKER, ESQ.
9 and
10 LAWRENCE R. BAILEY, JR. ESQ.
270 Lenox Avenue
New York, New York 10027

11 Attorneys for Defendant
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M.D/tk

1
2 THE CLERK: For sentence, United States of
3 America versus William Ruffin.

4 MR. MARCUS: Good afternoon, your Honor.

5 THE COURT: Good afternoon.

6 MRS. WALKER: Good afternoon, your Honor.

7 THE COURT: Mrs. Walker, is there any reason
8 why sentence should not be pronounced at this time?

9 MRS. WALKER: No, your Honor.

10 I just want to note for the record that I had
11 sent in some objections and exceptions to the pre-
12 sentence report. I sent the Court a copy and the
13 U.S. Attorney's office also got a copy and of course
14 the defendant has got a copy.

15 THE COURT: I have received them and studied
16 them.

17 Mr. Ruffin, do you know of any reason why
18 sentence should not be pronounced at this time?

19 MR. RUFFIN: Not to my knowledge.

20 THE COURT: Is there anything you wish to say
21 on behalf of your client, Mrs. Walker?

22 MRS. WALKER: Yes, if it please the Court, as
23 counsel for the defendant, Mr. Ruffin, at this time
24 I'd like to note for the record that this matter really
25 is, and has been, a complicated matter to the extent
that it was one unique in and of itself, that it was

1 the defendant himself who triggered the proceeding.
2 The Court knows and I just want to state it at this
3 time, that out of the eleven counts of the indictment,
4 after twelve hours the jury found him guilty with
5 respect to three of the items, could not agree with
6 respect to seven of the counts and found him not guilty
7 as to two.

8 Of course, we are not privy to the maze of
9 information and documents and evidence which was
10 presented to the jury during the course of the trial,
11 but I believe the question as to the defendant here,
12 it represents a tragedy at the age of 56 years of age,
13 of excellent work and being a law-abiding citizen,
14 and also, he is a man who has given time and served
15 his country. As of today, he is still a member of the
16 United States Reserves, having actively served, being
17 called to duty on three different occasions.

18 I can't help but point out to you and call the
19 Court's attention to the aspect of the pre-sentence
20 report that was made available to the defendant as to
21 the findings of the Probation Department, that he is
22 a person who is gravely concerned about the involvement
23 he has. It's not a flippant thing.

24 He is a family man, although he and his wife are
25 divorced. She had nothing but laudatory remarks and

1 statements that she gave to the probation department
2 in respect to him being a sincere, honest and
3 dedicated person. He is a good father.

4 There is a part of the report as to his son, who
5 is still in school. He's working on his masters now,
6 and now I am talking about the defendant, had always
7 stressed with them the importance of the difference
8 between right and wrong and I haven't dealt with this
9 matter for a long time but I have to state that I agree
10 with the younger son who says he must have gotten bad
11 advice, went into something which he didn't know,
12 without the proper advice.

13 He has not concealed anything. He has been open.
14 He was a person that cooperated in every way with the
15 Government in the entire matter of the investigation.
16 He isn't a person that is a pauper. He is a man that,
17 while he's worked hard, is a man who has lived humbly,
18 contributed greatly and gotten involved in this matter
19 which was above his head.

20 As the Court said at some point, right after the
21 jury returned, in the presence of the jury, it was an
22 extremely complicated matter and I do want to call to
23 the Court's attention that even the evidence that was
24 submitted to the jury was complex and the Court so
25 stated that. He was not involved with something for

1 personal gain. I think all of the records before the
2 Court indicate it wasn't a situation wherein this man
3 was buying cars, going on vacations, but something he
4 was trying desperately to help the community, in which
5 he grew up in.

6 He came from a home of humble circumstances.
7 He was, after the age of five, raised by his mother,
8 with whom he is very much devoted to, and now closely
9 in contact with, without a father, and she was a
10 domestic and supported and helped get him through
11 school and I do not believe that presents here, we
12 do not have here a defendant that has engaged in any
13 way in acts of trying to tear down or destroy but this
14 grew out of him trying to better himself.

15 His mother is dependent upon him. The only
16 thing now, she does get social security and the balance
17 of his support of her support comes from the defendant,
18 and taking -- I do know the Court is aware of the
19 fact that this stage of his tax matter is not the end
20 for the defendant, in that he still has to face the
21 civil aspect of it and he intends to -- as I say, he
22 has worked hard and he's given his just due to making
23 a contribution to society and I ask the Court to take
24 all that into consideration, in terms of imposing
25 sentence upon the defendant at this time.

1 I will go so far as to ask the Court that it
2 consider, in any sentence with respect to the statute,
3 one in terms of a fine as opposed to any time, in terms
4 of criminal punishment.

5 Thank you, your Honor.

6 THE COURT: Mr. Ruffin, is there anything you
7 wish to say in your own behalf?

8 MR. RUFFIN: No, sir.

9 THE COURT: Does the Government have any comments?

10 MR. MARCUS: Yes, your Honor, it does.

11 The United States Attorney for the Eastern
12 District, David G. Trager, has asked that Mr. Thompson
13 and myself read a statement of the United States
14 Attorney's position. At this point I would like to
15 read that statement to the Court.

16 The statement reads as follows:

17 The defendant, William M. Ruffin, comes before
18 this Court for sentence, having been convicted,
19 following trial by jury, of three counts of income tax
20 evasion, Title 26 USC 7201.

21 The totality of circumstances, as detailed
22 below, caused this departure from our usual policy of
23 refraining from making a recommendation at sentence.

24 Since your Honor presided at trial a statement
25 of the facts would be repetitious and since the jury's

1 verdict was more than amply supported it would be
2 unnecessarily argumentative, as well.

3 Suffice that the essence of each violation is
4 truly gratuitous when viewed in the light of this
5 defendant's advanced educational achievements, overall
6 business acumen and his relative sophistication,
7 personally.

8 Further, since the source of this unreported
9 income was not another individual's assets but rather
10 monies of the United States, the body politic was in
11 fact twice victimized by the defendant, although he
12 was but singly charged in this case. Thus, the overt
13 and affirmative willfulness of these evasions is
14 manifest.

15 Against this background, the position of the
16 United States is that a meaningful sentence in this
17 case must include a substantial term of imprisonment.
18 Anything less could be interpreted as a sanction of
19 deliberate and affirmative acts of wrongdoing. It
20 should be made clear to all who would attempt personal
21 enrichment by fraud, that they will be held accountable
22 for such conduct.

23 That is the statement of the United States
24 Attorney, Mr. Trager.

25 THE COURT: All right.

1 In determining upon the sentence, which I am
2 about to impose, I have reviewed and considered the
3 pre-sentence report, the comments on that report
4 submitted by defense counsel, the U.S. Attorney's
5 comments which I have just heard, certain letters
6 which have been directed to me on behalf of the
7 defendant, as well as, I guess you would call it, a
8 signed petition submitted on his behalf and I've also
9 reviewed in my own mind the information and circum-
10 stances surrounding the trial.

11 The decision as to sentencing is never easy.
12 It is particularly difficult in a case such as this.
13 I have also weighed the recommendations of the
14 Probation Department, considered the parole guidelines
15 and the comments and recommendations of my conferring
16 judges.

17 Based on all that, the sentence which I will
18 impose is as follows:

19 The defendant has been convicted on three
20 counts. On each of those counts, it is adjudged that
21 the defendant is hereby committed to the custody of
22 the Attorney General or his authorized representative
23 for imprisonment for a term of three years and on
24 condition that the defendant be confined in a jail
25 type or treatment type institution for a period of two

1 months. The execution of the remainder of the sentence
2 is hereby suspended and the balance, the defendant is
3 placed on probation for the balance of the three year
4 term to commence upon defendant's release from
5 confinement.

6 In addition, the defendant is fined the sum of
7 \$5,000.

8 The sentences are to run concurrent.

9 Mr. Ruffin, since you have been convicted after
10 trial, you have a right to appeal. If you are unable
11 to afford the cost of appeal, you have a right to
12 appeal in the form of pauperis.

13 Are there any applications?

14 MRS. WALKER: Yes, if the Court pleases.

15 On behalf of the defendant, I respectfully move
16 for a stay of execution and the continuance of bail,
17 pending appeal, pursuant to Rule 4 of the Federal Rules
18 of Criminal Procedure.

19 THE COURT: I take it, then, it is your intention
20 to appeal?

21 MRS. WALKER: Yes, sir.

22 THE COURT: With respect to that, I will stay
23 execution of the sentence for one week and if during
24 that time a notice of appeal is filed, then sentence
25 will be further stayed pending the determination of

1 the appeal, and I will also continue bail in its
2 present form, pending either the defendant's surrender
3 at the expiration of the original stay or pending
4 the final determination of the appeal.

5 MRS. WALKER: Thank you, your Honor.

6 THE COURT: Is there anything further?

7 MR. MARCUS: No, your Honor.

8 THE COURT: With respect to the outstanding
9 counts?

10 MR. MARCUS: Your Honor, as I understand it, the
11 defendant was convicted of counts 4, 7 and 8 and
12 acquitted on counts 2 and 3 and a mistrial was declared
13 with respect to counts 1, 5, 6, 9, 10 and 11.

14 Mr. Brodsky, who tried that case -- there was
15 an agreement with respect to the mistried counts, that
16 the Government had agreed not to retry the mistrial
17 counts, unless the guilty verdict which stand now on
18 the three counts in question were reversed on appeal.

19 Accordingly, the Government would ask that the
20 outstanding counts remain open pursuant to that prior
21 agreement.

22 THE COURT: Pending the outcome of the appeal?

23 MR. MARCUS: Yes, your Honor.

24 THE COURT: In the event of affirmance, that
25 would be dismissed. In the event it involved a new

1 new trial, then we presumably, we would proceed with a
2 trial on the outstanding counts. Is that your
3 understanding of the agreement, Mrs. Walker?

4 MRS. WALKER: That is my understanding of it.

5 I may note for the record, as the Court rightly
6 reminded defense counsel, that you need our consent and
7 it was a question of whether we had made an application
8 for dismissal of the items, and I think we made,
9 formerly made a motion with respect to that, but that
10 is my understanding that the Government intends to hold
11 them open, pending the results of the appeal and I
12 did not understand that they were going to, but they
13 would determine at the end of the appeal, should there
14 be a reversal, whether or not they would in fact be
15 retried.

16 As I recall, there was no statement that definitely
17 they were going to, but they want to keep open the
18 determination, whether or not they would be tried,
19 pending the outcome of the appeal.

20 THE COURT: That is my recollection, too.

21 * * *

investigation?

THE WITNESS: He was not considered at that time a subject of the investigation, but solely as a witness of the investigation.

Q Was that his status at the outset of his testimony before the Grand Jury at the time that you read him his Fifth and Sixth Amendment rights?

A Yes, Miss Walker. I might explain it has been my practice and my training any witness other than a Government agent gets his constitutional rights before a Grand Jury that I'm conducting.

Q You did not subpoena, as you previously testified, individual tax returns?

A I think I testified that my recollection is that I did not, but the Grand Jury -- I'm sorry, the Grand Jury subpoena will speak for itself.

Q Am I correct that is Rugore Associates corporate tax return was not the subject of that investigation?

MR. BRODSKY: Again, asked and answered.

THE COURT: The Government concedes that. Neither the defendant nor -- neither of the defendants -- let's put it this way.

Neither the defendant nor Rugore Associates was the subject of the investigation when the testimony

Goldman-direct

before the Grand Jury was taken on November 7, 1975.

MR. BRODSKY: March 7.

THE COURT: You're right.

Q Now then, could you tell us at what point --
question withdrawn.

I take it that you handled the Ruffin case throughout
up until today?

A Either myself and Mr. Drucker until Mr. Drucker
left the office. I believe one occasion Mr. Marcus from our
office handled the arraignment and for the last couple of
weeks Mr. Brodsky, but I've been involved in all stages of
the investigation; that is correct.

Q Could you tell us at what point Mr. Ruffin
became the target of the investigation that you were con-
ducting?

A Mr. Ruffin never became the target of the
investigation to which he was initially brought in on,
but at the time that he was questioned whether he had received
the income and he acknowledged he has regarding the rental
income, that is, and he acknowledged he had not reported it,
his posture became somewhat different than as a mere witness.

Q Am I correct that that occurred on March 7,
1975?

A I would have to look at the transcript to be

10 1

Goldman-direct

2

Q Mr. Goldman, I didn't ask you to read from the

3

transcript. I asked you a specific question.

4

THE COURT: Miss Walker, it's already in

5

evidence. We don't have a jury.

6

MISS WALKER: Yes.

7

THE COURT: I'm going to have to rule --

8

MISS WALKER: The only thing I want to do is

9

move on.

10

THE COURT: All right, this is the point at

11

which, apparently, Mr. Ruffin began to look like

12

a target in the eyes of the U.S. Attorney.

13

MISSWALKER: That's the only thing I wanted

14

to know.

15

THE COURT: Fine.

16

Q Now, Mr. Goldman, as you testified that at

17

the point, the bottom of Page 19 and the top of Page 20

18

of the March 7, 1975 transcript that Mr. Ruffin projected

19

himself as a possible target, what if anything did you do

20

with respect to advising Mr. Ruffin of his rights that there

21

had then been a change in his position?

22

MR. BRODSKY: The transcript speaks for itself.

23

THE COURT: Let's put it this way: Did you

24

do anything not shown in the transcript?

25

THE WITNESS: None, your Honor, nothing.

Goldman-direct

1
2 advised Mr. Ruffin that he was the possible target of a cri-
3 minal investigation?

4 A No, that's not what I said. What I said was
5 that -- it looked like he might have some tax problems. I
6 didn't go into any detail, but I told him in the nature of
7 that, based on what he testified prior regarding his failure
8 to file and other matters, that it looked like he might have
9 some tax problems, but I did not tell him that he was a
10 target.

11 Q Could you fix -- and I understand -- question
12 withdrawn.

13 I understand that you say that was before he started,
14 he appeared before the Grand Jury the first time on March 14,
15 1975 --

16 A No, that's his second appearance.

17 Q I'm talking about his second?

18 THE COURT: First time --

19 Q First time of the second time?

20 A It was either then or during the break of his
21 first appearance, because Mr. Ruffin appeared concerned and
22 asked me some questions why he was here and what was going on.

23 Q Did you make any notations of that conversation
24 with Mr. Ruffin?

25 A No, I did not.

Goldman-direct

to identify some other checks. I don't know the date of that.

Q Mr. Goldman, that I am correct -- that we are talking about the time he appeared before the Grand jury prior to the occasion that you and I first met?

A You mean November 11?

Q We were talking about -- and I'm questioning you now about the March, 1975 -- March 7, 1975, March 14, 1975 and November 11, 1975.

Prior to that time am I correct those occasions were before you and I met?

A That's correct. I might add, that I asked Mr. Ruffin if he had an attorney. He could bring him up with him on November 11. He didn't have one, so --

Q Let me also ask you when you testified as to that November 11, 1975 conversation, you said, "We". Can you tell us what part you participated in that conversation?

A Fifty percent of it.

Q Am I correct that the fifty per cent that you are talking about encompassed everything that you testified to?

A Yes.

Q Am I correct, it was you, then, for the first time, advising Mr. Ruffin of his possible criminal tax problem?

Goldman-direct

1
2 A That's my best recollection, that it was put
3 in such formal terms.

4 Q Subsequent to the March 7, 1975 appearance by
5 Mr. Ruffin before the Grand Jury, was there any communication
6 between the Internal Revenue Service and the Justice Depart-
7 ment with respect to Mr. Ruffin?

8 A I can only speak for myself and yes, there
9 was. There was communication before them, too.

10 Q With respect to Mr. Ruffin?

11 A Not with respect to Mr. Ruffin.

12 Q I'm talking about Mr. Ruffin?

13 A Yes, there was.

14 Q Could you tell us who initiated the communi-
15 cation with respect to Mr. Ruffin?

16 A I did or Mr. Drucker.

17 Q Can you tell us when?

18 A Sometime after Mr. Ruffin's first or second
19 appearance. It was only like five working days or four
20 working days. It was sometime during that first week or
21 possibly the second week. It was a fairly short time later.

22 Q In other words, March 4 or March 7?

23 A Right.

24 Q Did you provide the Internal Revenue Service
25 with a copy of Mr. Ruffin's Grand Jury Testimony?

Goldman-direct

1
2 A Sometime at a later date, I did. I can't
3 tell you exactly when. It usually took six to eight -- maybe
4 ten weeks to get the transcript. It was two or three months
5 later.

6 Q That would be --

7 A At the earliest.

8 Q Could you fix a date on that? Would you say
9 it was May or June of 1975?

10 A I just would be guessing, but I know it wasn't
11 before then.

12 Q But you are positive it was before November
13 4, 1975?

14 A I couldn't be positive of that, no.

15 Q You said, eight to ten weeks, Mr. Goldman?

16 A I said that's when we usually got the trans-
17 cripts. I said --

18 Q did you send it to him with a transmittal
19 letter?

20 A No, my recollection is that I -- an agent
21 probably came up to the office and picked it up.

22 Q Did you get a receipt for it, Mr. Goldman?

23 A No, I don't.

24 Q You don't have any record as to when you turned
25 the transcript over to them?

* * *

MISS WALKER: About five minutes, at the most.

THE COURT: All right.

THE CLERK: Several page document marked for identification as Defendant's Exhibit B.

(So marked)

BY MISS WALKER:

A Mr. Goldman, I show you a document marked Defendant's Exhibit B for identification, (handing) and ask you whether or not you had seen that written report prior to your talking with Mr. Ruffin on November 11th, 1975?

A Absolutely not.

Q You are familiar with this document, are you not?

A I've seen that document, yes.

Q In fact, the copy that I have, you provided me with, did you not?

A That's correct.

Q Did you turn over to Internal Revenue any other documents which Mr. Ruffin provided to you pursuant to the subpoena on his appearance of March 7, 1975?

A Yes, I did.

Q Could you tell us what documents?

1
2 A I turned over every document that Mr. Ruffin
3 turned over to me.

4 Q Could you tell us when that was done?

5 A I can't give you an exact date, no.

6 Q Give me an approximate date, Mr. Goldman.

7 A I would say it was probably within two months
8 after his appearance.

9 MISS WALKER: No further questions.

10 THE COURT: Will there be any cross-
11 examination?

12 MR. BRODSKY: No, your Honor.

13 THE COURT: Thank you, Mr. Goldman.

14 (Witness leaves stand)

15 THE COURT: We will recess at this point
16 until -- I think we better make it about 20
17 minutes after 2:00.

18 We received a note from the jury requesting
19 some testimony to be read but we won't be able to
20 do it until about 2:00 o'clock.

21 MISS WALKER: Your Honor, may I ask that we
22 remove our documents because these other jurors
23 coming in -- or should we leave them here?

24 THE COURT: You can leave them there. There
25 will be no problem.

* * *

2

1

March 1975 and was returnable on the 7th of March.

2

I guess this would be a Government's exhibit.

3

THE CLERK: Number 11.

4

MR. BRODSKY: No, 12. Exhibits 11-A, B and C

5

are Grand Jury minutes.

6

THE CLERK: Subpoena to testify before Grand

7

Jury received in evidence as Government's Exhibit

8

Number 12.

9

(So marked.)

10

MR. BRODSKY: Your Honor, we also have an order

11

signed by the Honorable John F. Dooling of this

12

Court, which I ask your Honor to take judicial

13

notice. This is a copy of the order. It was an

14

ex parte order under Rule 6(e) of the Federal Rules

15

of Criminal Procedure which authorized the disclosure

16

of Grand Jury minutes and subpoenaed documents,

17

records, from the January 10, 1975 Grand Jury to

18

Internal Revenue Service.

19

And for the completeness of the record, I

20

would like that marked as Government's Exhibit 13.

21

THE COURT: All right.

22

THE CLERK: So marked as Government's Exhibit

23

13.

24

(So marked.)

25

MISS WALKER: May I just see it, your Honor?

1 MR. BRODSKY: Your Honor, perhaps we can
2 expedite this. I thought this morning your Honor
3 had ruled that first we would litigate whether the
4 Grand Jury warnings were adequate, because what
5 Miss Walker is now arguing is really taint. She is
6 assuming that the Grand Jury warnings are inadequate
7 and therefore they fall. And you see, then, we
8 would have to argue that whatever Mr. Siegel did,
9 the fruit of the poisonous tree came from the
10 inadequate Grand Jury warnings.

11 And your Honor in an attempt to expedite this
12 had ruled this morning that we would try first to
13 consider the Grand Jury issue. I would submit that
14 if we did that then we wouldn't have an issue of
15 taint.

16 THE COURT: I had hoped we would be able to
17 separate it that way but apparently Miss Walker views
18 it as all one package apparently and not capable of
19 severance. So we might as well get the whole package
20 and find out the whole story. I do not want to cut
21 off the argument in any way, but is there any
22 question from the Government's point of view that
23 Mr. Siegel called Mr. Ruffin in in November. He had
24 the Grand Jury minutes. He had copies of at least
25 some of the checks that were before the Grand Jury.

13 1 He called them in for the purpose of ascertaining
2 and pinning down the details of whatever failure to
3 report income there was and to determine whether or
4 not there were offsetting deductions, or whatever,
5 and see whether or not there was enough to recommend
6 prosecution.

7 MR. BRODSKY: Your Honor is absolutely correct.
8 I would accept everything in your Honor's recitation
9 with the added explanation that the Internal Revenue
10 special agents when they do a taxpayer's interview,
11 as they call it, they ask many questions which they
12 are required to ask, for example, they have to negate
13 non-income sources. Was this money an inheritance,
14 or gift, or loan? Was there some other -- did you
15 have a safe deposit box -- did you have a safe deposit
16 box under your mattress, or something of that sort.
17 So it fulfills many things that are not done in a
18 Grand Jury investigation of another matter. And it
19 is a normal and often used method of investigating a
20 tax case.

21 THE COURT: The purpose was to prepare for
22 prosecution.

23 MR. BRODSKY: Well, no, your Honor, I would
24 say the purpose of that was for the agent to determine
25 whether or not to recommend prosecution.

* * *

1
2 Q Now, I understand from a concession from the
3 Government that you were either delivered or picked up
4 copies of the Grand Jury testimony of Mr. Ruffin, which is
5 now in evidence as Government's Exhibit 11-A, 11-B, and 11-C,
6 is that correct?

7 A Yes, ma'am.

8 Q Am I correct that it is a statement that that
9 was done sometime in July of 1974 --

10 MR. BRODSKY: 1975.

11 Q -- 1975.

12 A Well, it was sometime subsequent to that
13 period.

14 Q Now, did you at any time prior to November 4,
15 1975 communicate with the defendant William Ruffin?

16 A Just by telephone.

17 Q Back in July of 1975 --

18 A Oh, July? You said prior --

19 Q July.

20 A No, ma'am.

21 Q Am I correct that you had no communicated with--

22 MISS WALKER: Question withdrawn.

23 Q My target point is the time that you got the
24 Grand Jury transcript and I understand that is July 1975.

25 Now you had not communicated with Mr. Ruffin

1 prior to that? Am I correct?

2 A That is correct.

3 Q Now, I take it that you speak also for the
4 Civil Division?

5 MR. BRODSKY: Objection, your Honor.

6 THE COURT: Overruled.

7 MR. BRODSKY: It has nothing to do with them.

8 A To the best of my recollection I do not
9 believe there was any contact made by the Civil Division with
10 respect to Mr. Ruffin.

11 Q Now --

12 A -- at least I have no knowledge.

13 Q Now, your first contact with him afterreading
14 the Grand Jury testimony was on November 4, 1975?

15 A That is correct. My first personal contact
16 with Mr. Ruffin.

17 Q Now, did you at anytime advise him that you had
18 read his statement before the Grand Jury in March of 1975?

19 A No, ma'am.

20 Q Did you at any time advise him at that time
21 that there was a possibility that testimony -- sworn
22 testimony in the Grand Jury minutes that you then had in your
23 possessionrepresented criminal violations of the Internal
24 Revenue Code?
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A No, ma'am.

Q Did you at any time interrogate him as to whether or not he willfully, deliberately and knowingly failed and refused to report income taxes?

A Yes, ma'am.

Q Now, I take it when you say "yes, ma'am" it was -- the extent of your inquiry, am I correct, is set forth in Government's Exhibit 16, is that right, that is, your memorandum of interview?

A Yes, ma'am.

Q Now, is it your testimony that at the time that you talked to Mr. Ruffin on November 4, 1975 that no determination had been made to criminally prosecute him?

A That is correct, yes, ma'am.

Q Now, I take it it is your testimony also that at the time that you talked with Mr. Ruffin on November 4, 1975 that it was an endeavor in the course of your duties to see whether or not this taxpayer was concealing or evading reporting income?

A Yes, ma'am.

Q Am I correct that you found out at that point that this taxpayer openly told you about the income that he had?

A Yes, ma'am.

Siegal-cross-Brodsky

in the Brooklyn Intelligence Division.

He stated that most of his financial records were submitted to the United States Attorney's office in the Eastern Judicial District pursuant to a Grand Jury subpoena; that his accountant was working on his books and records and that he would like an additional 30 days to gather his available records before appearing for an interview.

He agreed to appear on Tuesday, November 14th, 1975 at which time he did appear and furthermore, he gave me his business telephone number.

Q In your memorandum of the interview on November 14th, is represented by Government's Exhibit number 16?

A That's correct, sir.

Q Sir, did Mr. Ruffin at any time, after you read him the card that you read to us here in court today, ever say at all during that interview that he did not want to answer any of your questions?

A No, sir.

Q Did he at any time indicate that he wanted to consult with an attorney?

A No, sir, never said that.

Q Even after he initially began answering questions and said he didn't want an attorney, did he at any time later,

10

1 your Honor.

2 THE COURT: It has been argued Mr. Ruffin
3 was not a target of the investigation when the
4 Grand Jury testimony started on the seventh, but by
5 Page 19 or 21 of that questioning on the seventh,
6 it's quite obvious, at least one prosecutor and
7 apparently both prosecutors mind , that were there,
8 he might well be a potential defendant.

9 (cont'd on next page)

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2 Then he stops filing after November 30th, 1972,
3 then three returns are filed.

4 There are no more returns filed at that time.
5 There's some indication there was some claim the
6 corporation was now no longer in business or it
7 didn't have to file any returns, which was, of
8 course, a false statement to the Internal Revenue
9 Service.

10 THE COURT: Mr. [redacted]sky, I don't think we're
11 going to have to get that far. I'm not denying
12 your application, but let's hold it in abeyance for
13 a moment.

14 What is concerning me is we have ahead of
15 us a fairly lengthy trial, which, if we go ahead
16 and the Second Circuit makes some kind of supervisory
17 determination, it would require a new trial in this
18 case.

19 If I were to grant suppression in this case
20 and under the authority of Jacobs, then the Govern-
21 ment, of course, would have to appeal, and this
22 could be resolved as part of the Jacobs
23 remand determination or the Washington Supreme
24 Court determination, and everything could go ahead
25 with, at least, that clear track on that particular

1
2 and that was a major reason for their ruling in
3 that matter the way they did. Now they now have
4 because the Department of Justice has done it in
5 the Southern District, and I understand they will
6 be doing it very soon in this district, to bring the
7 Strike Force under the supervision directly of the
8 U.S. Attorney.

9 THE COURT: I'm prepared then to give you my
10 decision.

11 MR. BRODSKY: If your Honor is going to
12 rule right now on the issue of taint, I understand
13 your Honor's feeling about it but for test.

14 I will ask to submit cases on that.

15 THE COURT: I don't think that's necessary.
16 I already indicated what my reading between the
17 lines of the grand jury minutes was as to what
18 actually happened. What I indicated there can be
19 considered as findings for purposes of this hearing.

20 I find that the defendant was not a target
21 of the investigation at the time it commenced, at
22 the time he appeared before the grand jury on March
23 7, 1975. He was given the warnings which are set
24 forth in the first few pages of that hearing, of
25 those minutes. Between pages 7 to 19 he indicated

1
2 any reasonable person to the fact that they had
3 potential criminal problems arising out of the ques-
4 tions they were being asked.

5 The fact that the defendant was interested
6 in an attorney and even went so far as to apply for
7 court-appointed counsel between the two hearings
8 on the 14th of March confirms my finding that the
9 defendant was aware, at least on the 14th, and
10 that he might well be the subject of criminal
11 proceedings.

12 With respect to the Jacobs case, it involved
13 a perjury prosecution. I do not think it is con-
14 trolling there. I do not think that the Second
15 Circuit intended to make a blanket ruling that
16 whenever testimony came up in the grand jury pro-
17 ceeding, fortuitous, as I have found it was here,
18 or fortuitously showing that someone else other
19 than the then subjects of the investigation
20 may have been criminally responsible for other ac-
21 tivities, that at that point they must be warned
22 that they, too, may be the subject of the investi-
23 gation. I don't think the Second Circuit intended
24 to go that far.

25 The conduct which they were reacting to in

(pp.46a-177a) THE COURT: I've got three lawyers waiting for

me downstairs. But go ahead.

MR. BRODSKY: The first is we'd ask for a ruling under rule 902 and rule 1005 of the Federal Rules of Evidence for official records of the United States Government, Internal Revenue Service, properly certified with seals. They are the tax returns in question here. They are self-authenticating documents. They come in as official records of the United States Government.

THE COURT: There will be no dispute over that, will there, Miss Walker?

MISS WALKER: No, your Honor.

THE COURT: All right.

MR. BRODSKY: Similarly, there is a transcript of an account which is a computer printout of the national computer for the Internal Revenue Service. These are similarly certified transcripts of the custodian of those records. Similarly admissable.

MISS WALKER: Can we see that?

MR. BRODSKY: Surely.

THE COURT: You brought the young lady from Internal Revenue Service here to testify to it. She's been here twice before, before me. She'll say that it's out of the Brookhaven Center, or wherever it came

MISS WALKER: I don't know what it means.

MR. BRODSKY: Well --

MISS WALKER: If the court please, may I just say that the documents that have been handed to me to examine and I'll pass them up to the court, isn't -- completely unclear as to really what they mean.

THE COURT: I know what they are.

MR. BRODSKY: We'll have someone to elucidate the entries.

THE COURT: All Mr. Brodsky wants is to have it determined that they are records of the Internal Revenue. He'll have an agent translate them for us.

MIS WALKER: We don't even have a stamp on here that it's Internal Revenue.

THE COURT: I think if you'll look at the certification, it says so.

MISS WALKER: I may be wrong but it -- on the one that I am looking at. Doesn't indicate that.

MR. GOLDMAN: On the right-hand side on the printed form is an all-standard Government, it says form 4303 and then it says, Revenue 8-69 Department of the Treasury, Internal Revenue Service.

MISS WALKER: That's talking about the paper. That's --

MR. GOLDMAN: The form.

MISS WALKER: The form.

MR. GOLDMAN: Then the stamp says they certify that the foregoing transcript of the account of the taxpayer named above in respect to the tax as specified is a true and complete transcript- It goes on but it does not in that stamp state that it is an Internal Revenue Service transcript.

THE COURT: I will rule the documents are admissible, without further foundation. It doesn't mean they mean anything, until somebody explains it.

MISS WALKER: That's exactly my point.

THE COURT: All right. We are talking only about getting them into evidence.

MR. BRODSKY: Similarly, your Honor, there is a -- again under rule --

MISS WALKER: May I just note my exception to that ruling, if the court pleases?

THE COURT: Yes. If you have any challenges to their authenticity, make it on Monday.

MR. BRODSKY: There is a copy of the -- certified true copy of the State of New York, certificate of incorporation of Rugore Associates, Inc.

THE COURT: Certified?

MR. BRODSKY: Yes, your Honor.

5 1 THE COURT: And it's admissable?

2 MR. BRODSKY: Admissable.

3 MR. BAILEY: May I see that, please?

4 MR. BRODSKY: And also, your Honor, we have a
5 deed where Mr. Ruffin transferred the premises in
6 question in this case to Rugore Associates Inc. It is
7 also -- bears the seal of the office of the City
8 Register of Kings County as having been recorded there,
9 if that would be admissable as a -- an official record
10 of the County of Kings, State of New York?

11 THE COURT: That document didn't come from the
12 County Clerk. That came from Mr. Ruffin, undoubtedly.

13 MR. BAILEY: I think so.

14 MR. BRODSKY: That's correct. Because the copy
15 filed with him --

16 THE COURT: They'd give you a photostatic copy?

17 MR. BRODSKY: That's correct.

18 THE COURT: That's the original deed?

19 MR. BRODSKY: That's correct, your Honor.

20 THE COURT: I assume there is no challenge as
21 to the signature or anything of that sort?

22 MISS WALKER: No, your Honor. This is one of
23 the documents he produced?

24 THE COURT: Yes.

25 MR. GOLDMAN: Yes. He turned this over I

* * *

1 1972, showing no tax due. It was after the due date.

2 Q Was any tax paid?

3 A No.

4 Q Any other entries, with respect to that
5 calendar year 1970?

6 A No.

7 Q And please tell us, what, if any, entries there
8 are on the record with respect to Rugor Associates regarding
9 the calendar year 1971?

10 A The return for 1971 was filed on November 30,
11 1972, which is after the due date, showing no tax due and no
12 estimated payments made towards the tax.

13 Q And, so, do those records show whether any
14 extensions had been obtained?

15 A They show no extensions filed for them.

16 Q Now, sir, with respect to the calendar year 1972,
17 what, if anything, do those records reflect?

18 A That no tax return was received. However, we
19 received a communication from the taxpayer he was not liable
20 to file for this period only.

21 Q And what, if anything, would that mean, sir,
22 if the taxpayer were a corporation?

23 A That would mean he had no business activity
24 in 1972.
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Q And if the corporation had income or a loss, would it be required to file a return for that year?

A Yes, it would.

Q And, sir, does that form indicate whether a return was filed on behalf of Rugor Associates, for the year 1972, anywhere in the United States?

A It indicates that no return was received anywhere in the United States.

Q Now, sir, directing your attention to the calendar year 1973, what, if any, entries does that form, your record, reflect with respect to that calendar year with respect to Rugor Associates?

A For the year 1973, it shows no return was filed and on May 20, 1974, we sent a notice to the taxpayer requesting that he communicate with us as to whether he had filed; and if he did, to tell us where and when; and if he didn't, to do so now.

Q To what address?

A Rugor Associates, Inc., in care of William Ruffin, 21 Irving Place, Brooklyn, New York, 11238.

Q And do your records reflect a response after the letter was sent?

A There is no record of any response and a subsequent notice was sent June 17, 1974, also asking for the

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reflected on that document?

A Not for the individual income tax return. It would be shown on here, but there is none shown.

Q So based on 18-B, no other communications were sent to him for the calendar year 1969 for his individual income tax except for the check being sent to him?

A Yes, except for the check.

Q Would your testimony be the same with respect to each of the other years?

A Right. There would be no reason for communication, and we have no other communications sent to him except for the check.

Q Now, a refund check, am I correct, a refund check is issued because the amount of tax listed on the return is less than the amount withheld from his salary during the year?

A Right.

That is one reason, right.

Q Mr. Martin, you testified on direct examination that Government Exhibit 18-A reflects that the Internal Revenue Service received a communication from the taxpayer that for the calendar year 1972 Rugor Associates was not required to file a return; do you recall that testimony?

A Yes.

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2 Q Now, I show you Government Exhibit 18-A, and I
3 ask you if you could tell me which column or line or whatever
4 on that document tells you that fact?

5 A As I explained before, we use codes to make an
6 entire statement as a matter of space-saving.

7 This code, 590, stands for taxpayer's reply that he is
8 not liable for this period only. That can come in the form of
9 a telephone or written communication.

10 Q Now, if a taxpayer sent a communication to the
11 Internal Revenue Service, for example, that he was not
12 liable to file a withholding statement return because he
13 didn't have any employees, would that be reflected under that
14 same code number?

15 A Not on this account, no, because this is the
16 corporate income tax return.

17 If a statement as to that effect came in, it would
18 show he wasn't liable to file Form 941, the Employees
19 Quarterly Tax Return. So, it wouldn't show up here.

20 Q Is there anything on that document that would
21 tell you where this form or communication from the taxpayer
22 was received?

23 A Where it was received?

24 Q Right.

25 A It was received at Brookhaven Service Center

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2 where I work in Holtsville, New York.

3 Q Would you tell us what the transaction document
4 locator number is?

5 A The document locator number stands for the
6 number that goes on the document and is placed numerically
7 in our files, so if we ever want to recall the document we
8 can so pull it out of the files.

9 Q Mr. Martin, am I not correct that with respect
10 to communications received by the Internal Revenue Service
11 they have to be received by a person, an individual who then
12 makes a determination that this communication should go into
13 column 590 or code number 420 or 590 or some other code
14 number?

15 A That is correct.

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you testified that a communication was sent to Mr. Ruffin
-- to Rugore Associates.

A That is correct.

Q At the address 21 Irving Place?

A Irving Place, Brooklyn, New York, 11238.

Q Would those letters reflect whether or not
Mr. Ruffin received the communication?

A No, it does not.

Q You then say that there is a second follow-
up communication sent I think about a month or two later?

A Just short of a month.

Q Just short of a month later.

Would those records reflect if Rugore Associates
received that communication?

A No, it only certifies that we issued it
at the address.

Q What if the letter was returned, would that
be reflected on there, like misaddressed or some reason
that it was returned by the Post Office?

A Yes, it would.

Q Now, turning the page again to 1974, I
believe you testified on direct that again communication
was sent to him about non-filing.

A Right, before it was sent for the 1973

Security tax and he claimed that a credit on the tax return in addition to the withholdings. Now, and let us call it a refund, when the tax return comes in for a refund there is no penalty for late filing and there is no interest because he has paid all during the year in excess of the tax due and the penalties and interest is only computed against the amounts that are due when the return is filed, from the due date of the return. If it had been revealed that Mr. Ruffin would have had to pay when he filed his tax return, he would be subject to penalties and interest.

Q Could you tell us -- withdrawn.

Does the computer make a copy of a record that is mailed or a communication that is mailed to a taxpayer?

A A copy of the communication, no, the taxpayer receives an original and a copy, the computer will put, will record that a communication was sent on the record and that -- well, there is a record made on the record, but not of the document that was actually issued.

Q So therefore the Internal Revenue Service would not have copies of the four notices that we have talked about for the two years, 1973 and 1974, for the corporation?

A Right, they would not have copies of those.

Q And the only record of those being sent would be the computer saying they were sent?

Martin-cross

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2 in the prior year, there may be an inquiry on the overall ¹⁵⁹
3 picture of how many returns are not filed for this particular
4 taxpayer, whether it be the corporate income tax or possibly
5 the employee's quarterly tax return, it encompasses the
6 whole picture of any returns that are delinquent.

7 Now, what happened here is that the 1972
8 was not due at the time that the inquiry took place, so
9 we don't want to ask Mr. Ruffin about 1972 since it is not
10 due yet. What we do is put the 954 to prevent us sending
11 out erroneous notices.

12 Q Would the inquiry be made by person or made
13 by the computer?

14 A This transaction, 594, would be put in by
15 a person.

16 Q So someone somewhere put in an inquiry?

17 A Well, the inquiry might have already been
18 in progress, the person put a 594, which is a transaction
19 code there, saying, We don't want to inquire about the
20 1972 January 16 of 73 since it is not due at this time
21 and it wasn't due until the following March, therefore, we
22 didn't want to look for it. We don't want to bother him
23 about the year 1972, the return.

24 Q Right, but from that code number, at some
25 point prior thereto, someone had to put in an inquiry.

2 A That is right, within the service, within
3 Internal Revenue.

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5 (continued next page)

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Q I mean that is obvious.

Now, that 590, the next document, would that be kept by the Internal Revenue Service or would that be destroyed?

A That would be kept.

Q That would be kept?

A Yes.

You mean the reply documents.

Q Right, from the taxpayer to the Internal Revenue Service.

A Right, provided if it is done on paper, in other words if Mr. Ruffin made a reply either on his own letter or sending back our notice, then we would file it away. Now, if he had called up one of the officers of Internal Revenue, we would take down his communication on a piece of paper, on a case history sheet, for example, and then we would file that under that document locator number which is present on the right hand side.

Q Now, would that document reflect whether or not Mr. Ruffin or Rugore obviously -- withdrawn.

Would that document reflect whether or not Mr. Ruffin or Rugore -- withdrawn -- would that document reflect that whether Mr. Ruffin called in in person or on the telephone or came into the office or mailed it in on a form

Martin-cross

saying, That we had no business activity for that year?

MR. BRODSKY: Objection, your Honor, asked
and answered.

THE COURT: Overruled.

THE WITNESS: Shall I answer the question.

THE COURT: Yes.

A The 590 transaction code would not tell you
whether it was a phone call or a letter. As I said before,
we have to save space.

The 590 represents either of those two
instances, which are very similar, so in this case we cannot,
tell whether it was a telephone or a written communication.
The only way to tell that would be to secure the document
from our files under this number.

Q Would the document locator number tell you
where that document is now?

A Yes, sir.

Q Where is it?

A According to the document locator number, the
form is filed at the Brookhaven Service Center that is now
in our Federal Records Center in Bayonne, New Jersey, because
this document, as is required, is more than three years old.

MR. BAILEY: No further questions, your Honor.

THE COURT: Any redirect?

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THE COURT: Anything further along that line, Miss Walker?

MRS. WALKER: Yes, your Honor.

The document that the witness alleges Mr. Ruffin sent to them saying that he did not have any tax liability --

THE COURT: He said it was either a document or a phone call.

MRS. WALKER: Yes, sir.

Didn't he say as to the phone call that there is a memorandum of the phone call?

THE COURT: Yes.

MRS. WALKER: So either one of those.

THE COURT: What about it?

MRS. WALKER: We would like to have it.

This was the first time that it was ever claimed that they have written it in something --

MR. BRODSKY: Your Honor, we rest upon the evidence of the certificated transcript of the computer and whatever weight the jury wants to give it we are stuck with.

There was some testimony that this document may be in the record center in Bayonne, New Jersey.

THE COURT: In dead storage over there.

MR. BRODSKY: Yes, sir.

5 1 THE COURT: What are you asking for, Mrs. Walker?

2 MRS. WALKER: The only problem is this, if it
3 hadn't been stated and he hadn't made an affirmative
4 statement then I would not be asking for it, but I
5 think it is important insofar as he said that he never
6 wrote it --

7 THE COURT: Why is it important?

8 MRS. WALKER: He said that they never heard from
9 him and he never heard from them.

10 Now, I believe of course that we asked about
11 communication between the parties, this was asked for
12 before trial, we asked for --

13 MR. BRODSKY: Pardon me --

14 MRS. WALKER: We asked for any communication
15 between the taxpayer and the Internal Revenue Service,
16 we specifically asked you about that.

17 MR. BRODSKY: I don't have that, and it couldn't
18 be clearer.

19 THE COURT: Does Mr. Ruffin intend to take the
20 stand?

21 MRS. WALKER: He does.

22 THE COURT: Well then we will see whether he is
23 going to testify to the contrary.

24 MRS. WALKER: Yes, I realize that he is going to
25 testify to the contrary and if the document is in

6 1 evidence, and it is his contention, he says that it is --
2 I mean --

3 THE COURT: Well, the witness indicated that the
4 best he can remember is that he never sent it or made a
5 phone call.

6 Now it is just totally impractical to take that
7 thing up and to open the dead files in New Jersey, if
8 you put in a request today you may get it in April or
9 May of next year.

10 MRS. WALKER: Okay, your Honor, but --

11 THE COURT: Now, Mr. Brodsky, you had something.

12 MR. BRODSKY: Yes, your Honor.

13 Just this matter of Miss Walker, your Honor, on
14 the morning of the trial, pursuant to our subpoena, we
15 received from the defense a set of worksheets done by
16 an accountant for Mr. Ruffin, and in addition we also
17 received some belatedly, we accepted, we did get some
18 xerox copies of Mr. Ruffin's check register and certain
19 of his cancelled checks --

20 MRS. WALKER: Additional checks.

21 MR. BRODSKY: Additional checks.

22 We did have, and your Honor will recollect this
23 from the Grand Jury minutes, we did have certain of his
24 original cancelled checks and statements since March
25 of 1975. Now we have had expert witnesses and Agent

* * *

A I was a field auditor.

Q How long have you been working for the Internal Revenue Service?

A Approximately four and a half years.

Q Tell us what your education is outside Government service?

A I have a BS in accounting from Brooklyn College and I just received my MBA from Pace University, in taxation.

Q Tell us your education with regard to Internal Revenue Service?

A In the course of training you take certain courses in personal income tax, corporate income tax. I had a course in fiduciary income tax and also involving both common and possibly more complicated type tax issues.

Q During your period of time as an employee of the Internal Revenue Service, have you had an opportunity to review tax returns and audit tax returns?

A Yes, I have.

Q Give us an estimate as to how many you might have gone through?

A Several hundred.

Q Did there come a time when you were assigned to work on a criminal tax investigation relating to William Ruffin and Rugore Associates?

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A Yes, I was.

3

Q Who did you work with during that investigation?

4

A I worked with Special Agent Jerry Siegal

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basically.

6

Q During that investigation, could you tell us

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generally what documents you had an opportunity to review --

8

withdrawn.

9

What did you do regarding that investigation --

10

just generally?

11

A I looked at all of the income checks representing

12

income received by Mr. Ruffin and/or Rugore Associates and

13

checks where expenses were paid.

14

Q Showing you a group of documents in evidence --

15

MR. GOLDMAN: And I represent to the Court these

16

are the rental checks already in evidence --

17

Q I ask you to look through those and tell us if

18

you had an opportunity to review those checks?

19

A Yes, I have.

20

Q You have?

21

A Yes, these are the rental income checks.

22

Q And you used those in whatever --

23

A In determining income.

24

Q I show you what's been marked Government Exhibit

25

19 in evidence and I ask you if you recall seeing a photocopy

* * *

7 1 checks in your calculations?

2 A Yes, we did. These are the checks which
3 represented what we considered business and personal
4 expenses.
5

6 Q You used these checks and the rental payments,
7 tax returns and bank accounts to do some initial
8 calculations, is that correct?

9 A Yes.

10 Q Approximately when did you complete those
11 calculations, to the best of your recollection?

12 A Sometime around I think March of '76.

13 Q Now, did there come a time at a later date
14 when you also received additional documentation which you
15 used to again calculate or perform certain calculations?

16 A Yes, I did.

17 Q Can you tell us when that was?

18 A We first received it on Thursday afternoon of
19 last week.

20 Q And showing you what has been marked as, I
21 believe, Defendant's Exhibits A, B --

22 MR. GOLDMAN: It's just A and B, your Honor.

23 Q I ask you if those are some of the documents
24 that you received last week which you referred to?

25 A Yes, there and there's also an exhibit C here.

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Q Okay.

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MR. GOLDMAN: I'm going to ask that these be marked as a separate exhibit. The reason for it will become apparent. This is part of the total exhibit which was to come in. There's a reason we want to mark them separately, your Honor.

8

THE COURT: Any objection?

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MR. BAILEY: Yes. They're in evidence and I have the originals here and if he wishes to use them to interrogate the witness, he may.

12

MR. GOLDMAN: Could I see the originals?

13

MR. BAILEY: Yes.

14

THE COURT: What's the reason for wanting an extra copy in evidence?

15

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MR. BRODSKY: May we approach the sidebar, your Honor?

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THE COURT: Yes.

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(Sidebar conference between Court and counsel as follows:)

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MR. BRODSKY: Your Honor, the reason we sought to have the copies marked separately from the originals was, during the recess when Mr. Rosenblatt reviewed -- originally Ms. Walker provided us only with xerox copies as we told the Court earlier -- in comparing

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A The originals?

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Q Yes.

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A Yes.

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Q When?

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A During the lunch hour recess.

7

Q Did you compare them to the photocopies you testified to a moment ago?

8

A Yes.

9

10 Q And did you find that the photocopied checks were photocopies of the original checks?

11

A Yes.

12

MR. BAILEY: Objection. Irrelevant.

13

THE COURT: Overruled.

14

The answer is yes?

15

THE WITNESS: Yes.

16

17 MR. GOLDMAN: I'll ask that this group of documents be marked as a Government Exhibit.

18

19 THE CLERK: Several page document marked for identification as Government Exhibit Number 22.

20

(So marked.)

21

THE CLERK: Do you want them stapled?

22

MR. GOLDMAN: Yes, please.

23

24 BY MR. GOLDMAN:

25

Q Agent Rosenblatt, showing you what's been marked

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2 as Government's Exhibit 22 for identification, I'll ask
3 if you recognize those documents?

4 A Yes, I do.

5 Q And when for the first time did you see those
6 documents?

7 A I believe it was Thursday afternoon.

8 Q And with regard to Government's Exhibit 22 --
9 withdrawn.

10 Now, showing you Defendant's Exhibits D, D-2,
11 D-3 and D-4 --

12 THE COURT: D-1.

13 MR. GOLDMAN: Yes, I'm sorry.

14 Q Did you have an opportunity to look at those?

15 A Yes.

16 Q When for the first time did you have an
17 opportunity to look at those?

18 A During the lunch recess.

19 Q Did you have an opportunity to compare D-1
20 through D-4 with Government Exhibit 22?

21 A Yes, I did.

22 Q What did you notice with regard to comparing
23 those two exhibits --

24 MR. BAILEY: Objection. Exhibit 22 is not
25 in evidence.

Rosenblatt-direct

13 1 THE COURT: Exhibit 22 is the document on the
2 basis of which you made some calculations?
3

4 THE WITNESS: Yes, it is.

5 THE COURT: Then you compared Exhibit 22 for
6 identification with Exhibits D-1 through D-4 over
7 the lunch hour?

8 THE WITNESS: Yes.

9 THE COURT: You found certain discrepancies?

10 THE WITNESS: Yes.

11 THE COURT: Overruled.

12 I told you that the exhibits marked over the
13 lunch hour were checks. The group of exhibits D-1
14 through D-4 are check registers rather than checks
15 themselves.

16 I think the question is what discrepancies
17 did you find.

18 THE WITNESS: Oh, yes.

19 A Yes, on the page of exhibit D-2 when we first
20 started to look through, I noticed red asterisks on D-2 that
21 don't appear on Exhibit 22 and there are also notations in
22 the margin under the column "Balance" with regard to WMB
23 and ODV loans that don't appear on Exhibit 22.

24 THE COURT: These are descriptive terms?

25 THE WITNESS: Yes, that's right.

* * *

Rosenblatt-cross

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2 there were discrepancies between defendant's exhibits D1,
3 D2, D3 and D4 and Government's exhibit 22.

4 A There are no discrepancies on D1.

5 Q Ok, D2, if I recall you did say there were
6 some discrepancies.

A Right.

8 Q Did those discrepancies in any way change
9 your calculations that you have been talking about?

10 A No, they did not.

11 Q They had no effect whatsoever on your calcula-
12 tions?

13 A No.

14 MR. BAILEY: Will you mark this.

15 THE CLERK: Seven page document marked for
16 identification as defendant's exhibit E.

17 BY MR. BAILEY:

18 Q Mr. Rosenblatt, I show you defendant's
19 exhibit 3 for identification and ask you to look through it
20 and ask if you can identify it.

21 A Yes, I can.

22 Q Could you tell us what it is?

23 A It is a price computation prepared by the
24 Regional Counsel of I.R.S.

25 Q Now, were they prepared by you?

Rosenblatt-cross

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2 A No, they weren't.

3 Q Did you have an input into their preparation?

4 A Yes, sir, I did.

5 THE COURT: That is for Rugore Associates or

6 --

7 THE WITNESS: It is for William M. Ruffin and
8 also for Rugore Associates.

9 THE COURT: For both?

10 THE WITNESS: Right.

11 BY MR. BAILEY:

12 Q At the time that you made those calculations,
13 or put input into defendant's exhibit E for identification,
14 did you have the benefit of various documents that you
15 testified earlier that you used in your calculations to
16 testify to on direct?

17 A Not all of them.

18 Q And am I correct that at that time you didn't
19 have any of defendant's exhibits A, B, C and D, the D series?

20 A That is correct, as well as the accounting
21 worksheet.

22 Q As well as the accounting worksheets.

23 Now, starting -- withdrawn.

24 I show you defendant's exhibit 23 in evidence
25 and on the sheet marked, "Rugore Associates, Inc., 1970,

Rosenblatt-cross

41

2 "We have an amount for depreciation of building, \$1,000.00."

3 A That is correct.

4 Q Is that correct?

5 A Right.

6 Q Would you tell us how you calculated \$1,000

7 as the amount of the depreciation for the building?

8 A That was the amount claimed on the return filed.

9 Q Did you go beyond the amount claimed on the
10 return filed?

11 A No, we accepted it.

12 Q I show you Government's exhibit 2I in evidence
13 which is the income tax return for Rugore Associates for
14 1970 and I direct your attention to the 18th line, which is
15 a line for the amount of the deductions, "Claimed deductions
16 for interest," and I ask you to read the amount set forth
17 that he claimed for deductions.

18 A \$904.00.

19 Q For interest.

20 And can you tell us the amount of interest that
21 you gave Rugore Associates in your calculations as shown in
22 Government's Exhibit 23 in evidence?

23 A \$2,206.47.

24 Q So it was understated by about half, over a
25 half?

Rosenblatt-cross

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A That is correct, sir.

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Q I show you Government's exhibit 3K in evidence and I direct your attention to the column marked 18 for "Interest deductions," and I ask you to read the amount.

6

A \$674.00.

7

8

Q And how much did you give Rugore for the interest deductions in your calculation?

9

A \$1,821.88.

10

Q Again understating more than half.

11

A Right.

12

13

14

Q Now, now, am I correct that when you made your calculations based on interest, you did not stick to the tax return?

15

A That is correct.

16

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19

Q Will you then explain to us, then, why if the defendant only recorded depreciation of \$1,000.00 on his tax return you start with that figure instead of going behind that.

20

A Ok.

21

Well, depreciation --

22

Can I have the return, I have to refer to it.

23

Q That is the 71 return?

24

I will give it to you.

25

A It doesn't make any difference.

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Now, referring to Schedule G for Depreciation on the return, the taxpayer indicates that he was using the straight line, four percent, which he says is giving the building a 25 year life, and he has the cost of \$25,125.00, which works out to \$1,000.00 a year.

Now, basically that is for a building, well, basically buildings have a useful life ranging from anywhere from 30 to 40 years and possibly more. Now to lower the life, there was no facts indicating why that should be done, plus that the taxpayer couldn't really bid because once he makes a selection he would have to get permission from the Commissioner to change the amount of the return, he has to file an application. I am not sure what the form is.

Q Now, if you learned that subsequent to the date of that return, if you learned that the building became worthless, was condemned, had to be boarded up, would that affect your calculation, sir, would that affect the calculation of depreciation?

MR. GOLDMAN: For what year, your Honor?

MR. BAILEY: For 1970.

A For 1970, no.

Q Now, if the building were condemned in the year 1974, if, and became worthless in that year, would that

Rosenblatt-cross

1 affect your calculations for it?

2 A For 1974?

3 Q For the 1974 return?

4 A Yes.

5 Q You said the taxpayer on his return placed
6 a value of the land and building -- the building, at
7 \$25,000.00.

8 A Just the building, right.

9 Q And on those returns as reported at a 25 year
10 useful life, that would be \$1,000.00?

11 A That is correct, that is correct, yes.

12 Q But if the building became condemned in 1974,
13 how would that affect the calculations for the depreciation
14 with respect to Rugore Associates, I am talking about
15 specifically, of the \$25,000 building which had been
16 given a 25 year useful life, how would that affect your
17 calculation for depreciation for that year?

18 A Now, which year?

19 Q It is 74 again, we are talking about 1974.

20 A He could write off the entire value.

21 Q Now, looking at it from hindsight, we are
22 in 1973 looking back, would it be possible for him to
23 spread the loss of that building, which is being condemned
24 in 1974, back to the years 1972 and 73 if he did not file a
25

Rosenblatt-cross

81

2 tax return in those years?

3 A I don't believe he could.

4 Q Now, in making your calculations, did you
5 use a cash receipt system or an accrual system?

6 A Cash system.

7 (continued next page).

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Rosenblatt

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Q Mr. Rosenblatt, if you recall your testimony on direct you answered a question posed to you by Mr. Goldman that you excluded those checks you considered personal checks from those that were business checks with respect to calculating the tax liability?

A That's correct.

Q Is there any way to tell which specific checks you considered personal?

A I'd have to see the checks and the check registers.

Can I add something to that?

Q Sure.

A In addition, there were checks unrelated to Rugore Associates or 1402 Bedford Avenue which is the property owned by Rugore.

Q Well, could you tell us how you made the determination that this was -- the check A was personal and check B was business?

A Based on notations on the checks or in the check register and if we were unsure as to the nature of it we usually allowed it as an expenditure.

Q Mr. Rosenblatt, I show you Government Exhibit 21 which is 252 checks -- I believe that's the number -- could you go through these quickly and just point out or separate

2 1
2 for us some of the checks you considered personal and not
3 included as a business deduction on your calculations?

4 THE COURT: 252 checks?

5 MR. BAILEY: If he could go through the first
6 twenty or thirty --

7 MR. GOLDMAN: The checks are in evidence and
8 a listing of them and the ones he allowed.

9 Q Is that correct? .

10 A That's correct. .

11 Q So any check not listed on your Government
12 Exhibit 23 in evidence you considered a personal check?

13 A That's not entirely true.

14 Q Then would you explain it to us?

15 A Can I refer to the schedule?

16 THE COURT: I think you also referred to
17 unrelated checks.

18 THE WITNESS: Right.

19 A On the part of the schedule showing "other"
20 with check number, date and amount, those checks were allowed
21 as business deductions.

22 In the category of interest and taxes, we based those
23 not on the checks alone but on the mortgage reduction loan
24 schedule as well as tax records of Kings County for payments
25 made.

* * *

Rosenblatt-cross

THE COURT: They are mortgage payments on other property?

THE WITNESS: On Exhibit 23 I show interest on mortgage and show one figure. I don't break it down.

For taxes on real estate that's based on tax records of Kings County and on Exhibit 23. I just indicate a total figure.

THE COURT: You don't identify the particular checks in that year that went into making up that figure?

THE WITNESS: Right.

THE COURT: So if you took out all of the checks listed on 23, it would be personal, plus those listed together which would equal the interest on the mortgage payments.

THE WITNESS: Right.

THE COURT: I understand. I hope somebody else does.

Q Mr. Rosenblatt, you testified that you reviewed the original tax returns in making the calculation correct?

A Yes.

Q With respect to the tax returns for Rugore Associates for 1970 and 1971 -- I think you have one of them in front of you --

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A I have 1971.

3

Q And I show you 1970 -- isn't it a fact that

4

Rugore Associates on that return understated many deductions
it legally had?

5

6

A That's true.

7

Q And isn't it also a fact that it didn't put

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in certain deductions it legally could have had?

9

A That's true.

10

Q Mr. Rosenblatt, you testified on direct that

11

you have an MBA in taxation?

12

A Yes.

13

Q And college degrees in what?

14

A Accounting.

15

Q And you have been with the IRS for four and

16

a half years?

17

A Right.

18

Q Have you mostly done personal returns, personal

19

audits, corporate audits or both and if both, what percentage?

20

A Basically, in the first six or eight months

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of training all you do are personal returns and then after

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that corporate returns and during the course of that you

23

generally pick up the shareholder's return and whether you

24

examine it or just inspect it for its accuracy that depends

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on the individual audit.

* * *

Stewart-cross

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BY MR. GOLDMAN:

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Q In reviewing your -- withdrawn.

4

Isn't it a fact then that your basis of calculating the taxes was on the basis of what Mr. Kladerman produced?

7

A Yes, that's true, but those records are of Rugore Associates and it doesn't have to be a formal journal --

9

MR. GOLDMAN: I ask everything after yes be stricken. I asked if he based his work on Mr. Kladerman's work papers, and he said yes and it can be answered yes or no.

13

THE COURT: Overruled. It may help me.

14

Q But your work was based on Mr. Kladerman's work papers?

15

16

A Yes.

17

Q Did you notice how Mr. Kladerman took depreciation for each year?

18

19

A Yes, I did.

20

Q What was the basis for his depreciation?

21

A A five year life on the building.

22

Q Can you tell us whether that's in accordance with the Internal Revenue Codes provisions regarding depreciation?

24

25

A It's based on the usefulness of the building.

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It can be a shorter life. In this particular case, they were having problems with the building and this is why a shorter life was used on it.

5

6

Q Would that be an appropriate way of calculating depreciations in the year 1969, in 1969?

7

A If the facts were known in 1969 --

8

9

Q How can you know in '69 that the building was going to be condemned in 1974?

10

11

12

13

A If they were having problems with the building -- and using a particular life and if you're having problems with the foundation and problems with the building, you could use a shorter life. There's justification for it, I think.

14

15

16

Q But at that time, to your knowledge, there was no indication they were having problems with the building -- at that time?

17

18

A Not through my knowledge, but through my questioning Mr. Ruffin on this.

19

20

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23

Q Now, Mr. Stewart, with regard to the method of depreciation used, isn't it true that once you determine what the usefull life is going to be, subsequent to that you can't re-determine that without permission of the Commissioner regarding the application of depreciation?

24

A That is true.

25

Q So if Mr. Ruffin filed an income tax return

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Q When did you first get those work papers?

A I believe it was sometime in October.

Q October of this year?

A October of this year.

Q Other than the checks marked Government Exhibit 21, when did you get these other exhibits?

A Approximately the same time.

Q In October?

A Approximately.

Q Now, Mr. Stewart, assuming for the moment that the building 1402 was condemned in 1974, what would be the proper way to treat that on the tax return?

A I can't answer that question because a formal condemnation by the city or state, it could be one thing. I think also if in '69 that you know that you have problems with the building -- the foundation, material, workmanship of the building at that particular time -- that could have a bearing on useful life. I think that has to be taken into consideration in recovering your cost against your income.

Q Assuming there were no problems with the building and in 1974 the city or state condemns the building, what's the proper method to be used according to the Internal Revenue Code to reflect that on income taxes?

THE COURT: When you say "condemn", are you

1
2 talking in terms of eminent domain.

3 MR. GOLDMAN: No, I don't believe that's the
4 situation here.

5 THE COURT: Condemned in the sense that it's
6 declared unfit for occupation.

7 MR. GOLDMAN: Yes.

8 THE COURT: Okay.

9 THE WITNESS: I think in 1969 if the taxpayer
10 in this particular case Rugore made an inspection of
11 the building and felt it was a secure building, and
12 that the building was structurally sound, they should
13 have used the 25 year life but I think if they
14 revealed something otherwise it should have been a
15 shorter useful life.

16 Q Were you aware that Mr. Ruffin and Rugore
17 Associates had a lease which provided that renovations were
18 to be done to that building?

19 A Yes.

20 Q Would that have changed your opinion if those
21 were done?

22 A Yes, if it had been completed.

23 Q When you reviewed the work papers of
24 Mr. Kladerman, can you tell on there how Mr. Kladerman
25 allocated the cost of this to the land and to the building?

:BD 6am

Stewart

(Outside the presence of the jury.)

MS. WALKER: Just one moment.

(Pause)

MS. WALKER: As far as the defendant is concerned, we laid the basis for our contention.

THE COURT: Your contention is rested upon what Mr. Kladerman did? We have to hear from him.

MS. WALKER: Pardon me. Mr. Stewart has testified, he made his basis on the record, he did admit on cross-examination that he examined Mr. Kladerman's records. But he made an independent determination.

THE COURT: You don't want to call Mr. Kladerman?

MS. WALKER: No.

MR. BRADSKY: We will call him, your Honor.

THE COURT: Fine. Put him on the stand.

J E R R Y K L A D E R M A N , sworn by the Clerk of the Court, testified as follows:

MR. GOLDMAN: I ask that the photostatic copies of a group of documents be marked as Government's Exhibit 29.

THE CLERK: Together?

MR. GOLDMAN: Yes, together.

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Kladerman-direct

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show you what has been marked Government's Exhibit 1-D?

3

A I did not see any tax returns at the time

4

I prepared this.

5

THE COURT: May I see the tax returns?

6

MR. GOLDMAN: Yes, your Honor.

7

(Pause)

8

MR. GOLDMAN: May I proceed?

9

THE COURT: Yes.

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Q Mr. Kladerman, is there something inherent in

11

the check register that Mr. Ruffin showed you that led you

12

to conclude he was on the accrual basis?

13

A Nothing.

14

Q Now, with regard to the depreciation that you

15

calculated for Mr. Ruffin, did you depreciate that on the

16

basis of hindsight, that you knew in 1974 that the building

17

was condemned and you worked your way back?

18

A Yes.

19

Q Can you point to any provision in the Internal

20

Revenue Code or generally accepted accounting practices and

21

principles as to what permits that?

22

A Under normal circumstances, without the

23

benefit of this hindsight, and since this was a pre-existing

24

building that was purchased and under normal conditions, a

25

new building would probably be depreciated, and since we use

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Kladerman-direct

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composite rates on the basis of three percent a year, if
3 this was an older building and there was no condemnation,
4 most likely in this particular case we might have used a
5 20-year or 5 percent a year basis.

6

Q You wouldn't have used a 20 percent --

7

A If I had done it in 1969, I would have used

8

a 5 percent basis. Since the worksheets were prepared in

9

the space of five or six months, and I did have the benefit

10

or knowing that the building only lasted for five years, I

11

took the option of writing that off over the shorter life.

12

THE COURT: Has the building been demolished?

13

THE WITNESS: Not that I am aware of.

14

THE COURT: What is the basis of your assumption

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it has no value today?

16

THE WITNESS: I was told that the building was

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condemned and not occupiable by anyone.

18

THE COURT: You equate not being able to be

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occupied today as without value?

20

THE WITNESS: Certainly, if it can't be

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occupied it doesn't earn revenue.

22

THE COURT: Not until made occupiable?

23

THE WITNESS: Yes.

24

THE COURT: Do you know what that would cost?

25

THE WITNESS: It is difficult for me to tell

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Kladerman-direct

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without consulting with an architect or engineer.

3

Q And lots of other people too?

4

THE WITNESS: Yes. But I would use them as

5

my experts as to the probable cost of putting that

6

into occupiable condition.

7

THE COURT: I understand.

8

Q Mr. Kladerman, Rugore Associates had a lease

9

in '70 through '74?

10

A Yes

11

Q Was that building ever used to your knowledge?

12

A When?

13

Q Was it ever used between 1971 or '70 and '74?

14

A Not that I know of.

15

Q So, you could have drawn that same conclusion

16

back in that period of time, is that correct, and it wasn't

17

until there was no longer a lease?

18

A I wasn't doing the records in those years.

19

Q The basis of your records -- your calculation

20

is strictly on hindsight and what you knew?

21

A Yes.

22

Q Not at the time the building was being leased

23

but later on when you prepared the record?

24

A Right.

25

Q Can you tell me what one of the best ways to

* * *

EK/tk¹

AFTERNOON SESSION

372

lpml²

December 15, 1976

2:30 P.M.

THE CLERK: United States of America versus
William Ruffin, case on trial.

(The trial then proceeded in the absence of the
jury.)

J E R R Y K L A D E R M A N , having been called previously
as a witness on behalf of the Government and having
been previously sworn, continued to testify as follows:

THE COURT: Mr. Kladerman, you are still under
oath.

• Mrs. Walker, do you want to cross-examine?

MRS. WALKER: Yes, your Honor.

CROSS-EXAMINATION

BY MRS. WALKER:

Q Mr. Kladerman, on direct or in response to
some questions that were asked by the Court as to the use of
the short depreciation method -- do you recall being asked
questions about that?

A Yes.

Q Now, Mr. Goldman asked you a number of questions
based on assumptions: do you recall being asked those questions?

A Yes.

Q Now, isn't it a fact that there were problems as

Kladerman - cross/Walker

to this building in 1971 through 1974 which justified the determination to use the shorter depreciation life?

A Yes.

MRS. WALKER: No further questions.

MR. GOLDMAN: I have one question, your Honor.

REDIRECT EXAMINATION

BY MR. GOLDMAN:

Q Mr. Kladerman, with regard to depreciation, do you know and can you tell us any generally accepted accounting principle which permits the depreciation the way you calculated it?

A In terms of my experience, and I was a public accountant for about eleven years --

Q I just want to know if there is any principle and if you can state that principle?

A In accounting for bookkeeping purposes or in accounting for tax purposes?

Q First, for tax purposes.

A I believe that where, you know --

Q I just want to know if you can tell us any provisions within the Internal Revenue code relating to accounting methods which permit depreciation as you have taken it on your work papers.

A I believe so.

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MRS. WALKER: Your Honor, we withdraw it then,
we withdraw it.

THE COURT: You withdraw what?

MR. BAILEY: The entire stipulation and we
won't both with Mr. Goldman.

THE COURT: Are we ready to proceed, then,
with the jury?

MR. BRODSKY: Your Honor, maybe the stipulation
should just be marked as an appellate or a Court
exhibit so that it is in the record that they have
withdrawn it.

THE COURT: Since it is withdrawn, it is not
before the Court.

MR. BRODSKY: Well, I know, but I expect they
will raise it on appeal and I would like it to be a
part of the record so --

THE COURT: How can you raise something on
appeal which they have withdrawn?

MR. BRODSKY: It happens all the time, your Honor.

THE COURT: Mark it for identification as
Court's exhibit D for identification.

THE CLERK: D for identification is marked.

MR. BRODSKY: Thank you, thank you.

MR. BAILEY: Your Honor, we are ready to proceed

MRS. WALKER: We are ready to proceed.

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IG:KG

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Siegal-direct

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2 J E R O M E S I E G E L , called as a witness
3 having been first duly sworn by the Clerk of the court
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BAILEY:

7 Q Your business or occupation, sir?

8 A Special Agent, Intelligence Division, Internal
9 Revenue Service.

10 Q And what does that entail?

11 A Investigating matters to see if there are
12 violations concerning -- criminal violations concerning the
13 Internal Revenue Service Code.

14 Q And were you involved on the case as to the
15 investigation of Mr. Ruffin?

16 A Myself and another special agent.

17 Q Mr. Siegel, could you tell us the first time
18 that you met the defendant William Ruffin?

19 A The first time I met Mr. Ruffin was at the
20 time of the initial interview which was November 4, 1975.

21 Q And could you tell us how he came to come to
22 that interview?

23 A Yes, sir.

24 Pursuant to a letter sent to Mr. Ruffin he appeared
25 in our office.

Siegel-direct

Q I show you Defendant's Exhibit H for identification and ask you if you can identify it?

A Yes. This is a copy of the letter sent to Mr. Ruffin at 21 Irving Place, Brooklyn, New York.

Q And in response -- withdrawn -- am I correct that in response to that letter Mr. Ruffin came to your office on November 4?

A Yes, sir.

Q Could you tell us how long Mr. Ruffin remained in your office on November 4?

A If you could give me my memorandum of interview?

(document handed to witness)

THE COURT: You are refreshing your recollection from Exhibit 16 for identification?

THE WITNESS: Yes, your Honor.

A The interview started at 9:30 A.M. and terminated at 1:55 P.M.

Q Approximately 2:00?

A Yes, sir.

Q Am I correct that you asked Mr. Ruffin to come to your office to talk to him with respect to your investigation of him?

A Yes, sir.

Siegel-direct

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Q And that you -- withdraw that -- during this four and a half period of time -- withdrawn.

During the four and a half hour time he was in your office did you ask him various questions concerning your investigation?

A Yes.

Q Did he answer those questions?

A Yes.

Q Did he refuse to answer any questions?

A To the best of my recollection he answered all questions.

Q Did he generally cooperate with you at that meeting?

A Yes, sir.

MR. BAILEY: No further questions.

THE COURT: Any cross?

CROSS-EXAMINATION

BY MR. BRODSKY:

Q Mr. Siegel at the outset of that interview with Mr. Ruffin, did you advise him of his rights?

A Yes, sir.

Q Would you please tell the ladies and gentlemen of the jury what rights you advised Mr. Ruffin of?

MR. BAILEY: Objection, your Honor.

Siegel-cross

THE COURT: What ground?

MR. BAILEY: I don't know the scope.

THE COURT: Overruled.

A At the inception of the interview the taxpayer was shown the credentials of the agents present. He was advised one, of the functions of the special agent is to investigate the possibility of criminal tax violations.

He was then read his constitutional rights from a card that I have with my credentials -- he was shown these credentials, (indicating) and read his rights and I will read them again.

"As a special agent one of my functions is to investigate the possibility of criminal violations of the Internal Revenue laws and related offenses.

"In connection with my investigation of your tax liability I would like to ask you some questions. However, first I advise you that under the Fifth Amendment to the Constitution of the United States I cannot compel you to answer any questions or to submit any information if such answers or information might tend to incriminate you in any way.

"I also advise you that anything which you say and any information you submit may be used against you in any criminal proceeding which may be undertaken.

Siegel-cross

"I advise you further that you may if you wish seek the assistance of an attorney before responding."

Mr. Ruffin stated that he understood his rights --

MR. BAILEY: Objection.

THE COURT: Sustained.

Q Mr. Siegel, at what point in the interview did your reading of that card take place?

A At the very inception of the interview.

MR. BRODSKY: Nothing further.

REDIRECT EXAMINATION

BY MR. BAILEY:

Q Am I correct that after you read his rights from the card Mr. Ruffin answered all your questions?

A Yes, sir.

Q And he cooperated with you in every way?

A He answered all of the questions during the interview, yes sir.

Q Was there any other way for Mr. Ruffin to cooperate with you --

MR. BRODSKY: Objection your Honor.

THE COURT: Did you finish the question?

MR. BAILEY: I did not, your Honor.

THE COURT: Finish the question.

Q During the interview on November 4, 1975 --

Siagel-redirect

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MR. BRODSKY: Objection, your Honor.

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THE COURT: Overruled.

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Mr. Ruffin cooperated and answered all

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questions.

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MR. BAILEY: Nothing further.

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THE COURT: Next witness?

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MR. BRODSKY: I have to get the witness from

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the witness room your Honor.

10

THE COURT: All right.

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(pause)

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MR. BAILEY: Sorry for the delay, your Honor.

13

The Defendant calls Olla Kimper.

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THE COURT: Step forward, please.

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O L L A K I M P E R , having been first duly sworn by
the Court, testified as follows:

DIRECT EXAMINATION

BY MR. BAILEY:

Q Miss Kimper, please keep your voice up while
you're talking so all of the jurors can hear you.

Tell us your business or occupation?

A I'm a supervisor of guidance, Manhattan
High Schools.

Q Do you know the defendant, William Ruffin?

A Yes, I do.

Q Would you tell us how long you've known him?

A Over thirty years.

Q Am I correct that you've seen him and been with
him on many occasions over those thirty years?

A Yes.

Q Are you familiar with his reputation in the
community as being an honest and law-abiding citizen?

A Yes.

Q Tell us what that reputation is?

A Very fine, upright, honest young man.

Q Could you tell us are you familiar with his
reputation in the community for truthfulness and veracity?

A Definitely.

Q Tell us what that reputation is.

1
2 A Excellent.

3 Q Do you have an opinion as to the reputation --
4 withdrawn.

5 Do you have an opinion as to the character of
6 Mr. Ruffin with respect to his truthfulness, his law-
7 abidingness and his honesty?

8 A Yes -- the finest, the finest.

9 MR. BAILEY: No further questions, your Honor.

10 THE COURT: Cross-examination?

11 CROSS-EXAMINATION

12 BY MR. BRODSKY:

13 Q Miss Kimper, did you know during the thirty
14 years you knew Mr. Ruffin that he was the owner of a piece
15 of property at 1402 Bedford Avenue?

16 A No.

17 MR. BAILEY: Objection.

18 THE COURT: Overruled.

19 Q What was your answer?

20 A No.

21 MR. BRODSKY: I have no further questions,
22 your Honor.

23 THE COURT: Thank you, Miss Kimper. You
24 may step down.

25 Next witness.

MR. BAILEY: The defense calls Seymour Weiner.

THE CLERK: One-page document marked for identification as Defendant's Exhibit H.

One-page document marked for identification as defendant's Exhibit H-1.

(So marked.)

SEYMOUR WEINER, called as a witness on behalf of the Defendant, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BAILEY:

Q Mr. Weiner, would you tell us your business or occupation?

A I'm a senior realty acquisition manager, specialist.

Q By whom are you employed?

A United States Postal Service.

Q Do you know the defendant William Ruffin?

A Yes, I do.

Q How long have you known him?

A Eight or nine years.

Q Have you been with him and seen him on many occasions during those eight or nine years?

1
2 A Yes.

3 Q Are you familiar with Mr. Ruffin's reputation
4 for being an honest and law-abiding citizen in the community?

5 A I believe his reputation is outstanding.

6 Q And tell us if you're familiar with his
7 reputation in the community for truthfulness and veracity?

8 A That likewise is outstanding.

9 Q And can you tell us if you have an opinion as
10 to his reputation and character?

11 A Yes, I do. His character -- in my opinion, he's
12 one of the finest individuals I ever met.

13 MR. BAILEY: Nothing further.

14 CROSS-EXAMINATION

15 BY MR. BRODSKY:

16 Q Are you a business or professional associate
17 of Mr. Ruffin's?

18 A Yes, I am.

19 Q You met him through your job?

20 A Yes.

21 Q And do you know what Mr. Ruffin's job has been
22 the last eight or nine years?

23 A He's had various jobs.

24 MR. BAILEY: Objection.

25 THE COURT: Overruled.

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Q Do you know his job title, sir?

3

A Yes. He's a realty management specialist.

4

Q And what does that mean -- what are his

5

functions?

6

A Involves real estate in conjunction with

7

postal facilities.

8

Q Specifically what is Mr. Ruffin's

9

involvement with respect to real estate?

10

A Purchasing and leasing properties.

11

Q And does that involve any legal documents and

12

forms?

13

A To a limited extent.

14

Q What role would Mr. Ruffin play for example

15

if the postal service wanted to buy a piece of property?

16

MR. BAILEY: Objection.

17

THE COURT: Getting a little beyond the scope

18

of the direct, aren't we, Mr. Brodsky?

19

MR. BRODSKY: Very well, your Honor.

20

Q Mr. Weiner, you indicated that you were familiar

21

with Mr. Ruffin's reputation?

22

A Yes.

23

Q For truth and veracity?

24

With whom have you discussed Mr. Ruffin's

25

reputation?

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A With whom have I discussed?

Q Yes, sir. Did you ever discuss Mr. Ruffin's truth, honesty or integrity or honesty with another person?

A Oh, yes.

Q Approximately how many other people?

A Many.

Q Was it uniform?

A Very much so.

Q Now, Mr. Weiner, I'd like to show you Government Exhibit 2-I in evidence and I ask you if you recognize what that document is.

MR. BAILEY: Objection.

THE COURT: Overruled.

A Well, it states that it's a corporation income tax return.

Q For the year 1970?

A 1970, yes.

Q Do you recognize the signature on the bottom of that document?

A Yes, I believe I do.

Q Whose signature do you recognize that as being, sir?

A Mr. Ruffin's.

Q The same man you testify you've known for eight

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or nine years?

A That's correct.

Q Directing your attention to -- does that appear to be his handwriting and not just his name?

MR. BAILEY: Objection.

MR. BRODSKY: As best he knows.

THE COURT: Overruled.

A I've seen his handwriting and it seems similar.

Q Directing your attention to line 1, it says gross receipts or gross sales?

A Yes.

Q And sir, what word is printed in there by hand?

A The word none.

Q And you see a stamp further down on the document a little red circle stamp.

A Yes, I do.

Q What does that stamp indicate to you -- what does it say?

A It says received and there's a date. There's an illegible word and then it says Service Center IRS and then address.

Q May you conclude, sir, from that that document was filed with Internal Revenue Service?

1
2 A I wouldn't conclude anything. I'm really not
3 familiar with how it's filed or how it's received.

4 Q Let's just assume for the purpose of my
5 question that that document was filed with the Internal
6 Revenue Service and assume further sir that at the time the
7 document was filed, rather than having no gross receipts or
8 gross sales, that the company for whom that return was filed
9 in fact had a gross income from rents of \$30,000 for that
10 period of time.

11 Knowing those facts, sir, would that change
12 at all your opinion of Mr. Ruffin?

13 MR. BAILEY: Objection.

14 THE COURT: Sustained.

15 MR. BRODSKY: No further questions, your honor.

16 THE COURT: Thank you very much, Mr. Weiner.

17 You may step down.

18 MS. WALKER: Mrs. Nancy Chase.

19 In the meantime, we'll call Captain William
20 Alleyne.

21 (Continued next page.)
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1 W I L L I A M F . A L L E Y N E , having been first
2 duly sworn by the Clerk of the Court, testified as
3 follows:

4 DIRECT EXAMINATION

5 BY MS. WALKER:

6 Q Captain Alleyne, what's your business or
7 occupation?

8 A I'm employed by New York City Department of
9 Correction as a captain.

10 Q And how long have you been so employed?

11 A As a captain or in the Department?

12 Q By the Department.

13 A Sixteen years.

14 Q As a captain?

15 A Yes, sir -- the last four.

16 Q Now, do you know the gentleman to my left,
17 Mr. William Ruffin?

18 A I do.

19 Q And will you tell us how long you have known
20 Mr. Ruffin?

21 A Approximately 23 years.

22 Q Now, during the course of the 23 years that you
23 have known Mr. Ruffin, have you had occasion to become
24 acquainted with his general reputation in the community in
25 which he resides?

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A Yes, I have.

Q Has that acquaintance caused you to have some knowledge as to his reputation of being a law-abiding citizen?

A The highest.

Q You have no doubt about that?

A None whatsoever.

Q Are you acquainted with his reputation in terms of honesty and fair dealings?

A Yes, ma'am.

Q And what is that reputation?

A It's of the highest.

Q Are you acquainted with his reputation in the community for truth and veracity?

A It's outstanding.

Q What's your opinion as to his character?

A The highest beyond reproach.

CROSS-EXAMINATION

BY MR. BRODSKY:

Q Did you know that Mr. Ruffin was the owner of a piece of property at 1402 Bedford Avenue here in Brooklyn?

A I don't think so. When you say know, I didn't.

Q Did you think he was?

A No, I had no reason to.

MR. BRODSKY: No further questions.

1
2 THE COURT: You may step down.

3 MS. WALKER: Ms. Nancy Chase, please.

4 N A N C Y M. C H A S E , having been called as a witness on
5 behalf of the defendant, having been first duly sworn
6 by the Clerk of the Court, was examined and testified
7 as follows:

8 DIRECT EXAMINATION

9 BY MRS. WALKER:

10 Q Mrs. Chase, would you please tell the Court and
11 jury what is your business or profession?

12 A I work for the Board of Education.

13 Q And in what capacity?

14 A As assistant to the principal.

15 Q And how long have you had that position?

16 A Four years.

17 Q And how long have you been employed by the
18 Board of Education?

19 A 25 years.

20 Q Now, are you acquainted with the gentleman to
21 my left, Mr. William Ruffin?

22 A Yes, I am.

23 Q Could you tell us how long you have known him?

24 A Since 1965 when we were working together with
25 the Community Sponsors.

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Q That's the Community Sponsors --

A Which is a community group formed to work with the poverty programs.

Q And unwed mothers' program?

A And unwed mothers' program, yes.

Q Have you become acquainted with Mr. Ruffin's general reputation for being a law-abiding citizen?

A Yes.

Q And can you tell us what that reputation is?

A Well, he's most -- I apologize -- I broke my teeth --

THE COURT: That's all right.

A He's most highly respected by everyone in the community. He's most cooperative, understanding of the needs of the program which we were both involved in and well thought of.

Q And are you acquainted with his reputation for honesty and fair dealing?

A Oh yes, by all means.

Q What is that reputation?

A Most honest, most sincere.

Q Are you acquainted with his reputation for truth and veracity?

A Yes.

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Q And what is that?

A Of the highest.

Q Now, what is your opinion of his character and reputation?

A As far as I'm concerned, most dedicated, most honest person, very sincere, truthful.

MS. WALKER: I thank you.

THE COURT: Any cross-examination?

MR. BRODSKY: No questions, your Honor.

THE COURT: You may step down. Thank you, Miss Chase.

MS. WALKER: Mr. Joseph Drayton.

J O S E P H F . D R A Y T O N , called as a witness on behalf of the defendant, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

DIRECT EXAMINATION

BY MRS. WALKER:

Q Mr. Drayton, would you please tell the Court and jury what is your business or occupation?

A I'm chef inspector to the State of New York for the Division of Occupational Safety and Health.

Q How long have you been so employed?

A Thirty years in the Department and two years

1
2 as chief.

3 Q Now, do you know the defendant William Ruffin,
4 the gentleman sitting to my left?

5 A Yes, I do.

6 Q And could you tell us how long you have known
7 Mr. Ruffin?

8 A 35 or 40 years.

9 Q Now, incidentally, have you served in the Army
10 Reserves with Mr. Ruffin?

11 A Yes, I have.

12 Q And you presently are?

13 A Yes, indeed.

14 Q Now, during the time you've known him, have
15 you become acquainted with his reputation as a peaceful and
16 law-abiding citizen?

17 A Yes, I have.

18 Q Now, could you tell us what is that reputation?

19 A A very peaceful and very law-abiding citizen.

20 Q Have you become acquainted with his reputation
21 for honesty and fair dealing?

22 A Yes, I have.

23 Q And could you tell us what that reputation is?

24 A Always one of being very honest and very fair
25 in his dealings.

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2 Q Now, are you acquainted with his reputation
3 and veracity?

4 A Yes.

5 Q Tell us what that is?

6 A There again, I would say that it's above
7 reproach, it's of the very highest.

8 Q And what is your opinion of his character and
9 reputation?

10 A I think it encompasses just about everything I
11 said in all respects in those areas that you have mentioned
12 -- that he's one of the top people that I know in that truth,
13 veracity, fairness, in every way, one of the best.

14 MS. WALKER: Thank you. I

15 THE COURT: Any questions?

16 MR. BRODSKY: Mr. Drayton, do you know that
17 Mr. Ruffin was the owner of a piece of property at
18 1402 Bedford Avenue?

19 THE WITNESS: No, I did not.

20 CROSS-EXAMINATION

21 BY MR. BRODSKY:

22 Q Were you ever present when Mr. Ruffin filled
23 out his tax returns?

24 A No, I wasn't.

25 MR. BRODSKY: No further questions, your Honor.

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2 THE COURT: Thank you, Mr. Drayton. You may
3 step down.

4 Next witness.

5 (Continued next page.)
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2 G E O R G E H U G H E S, called as a witness,
3 having been duly sworn by the Clerk of the Court,
4 testified as follows:

5 THE CLERK: Please state your full name
6 for the record.

7 THE WITNESS: George Hughes, H-u-g-h-e-s.

8 THE CLERK: Please be seated.

9 DIRECT EXAMINATION

10 BY MS. WALKER:

11 Q Mr. Hughes, would you please tell the Court
12 and jury what is your business or profession.

13 A I'm an assistant sales manager, Midtown
14 Chevrolet.

15 Q For how long have you been so employed?

16 A Slightly over two years.

17 Q Now, are you acquainted with or do you know
18 the defendant-- the gentleman to my left, Mr. William
19 Ruffin?

20 A I do.

21 Q Can you tell us how long you have known him.

22 A Fifteen or more years.

23 Q Now, have you-- Incidentally, are you
24 involved in community situations?

25 MR. BRODSKY: Objection, your Honor.

Hughes-direct

A Yes.

THE COURT: Overruled.

Q Now, have you become acquainted-- come to notice Mr. Ruffin's reputation for being a peaceful and law-abiding citizen?

A Certainly.

Q Could you tell us what that reputation is?

A I don't know how to respond to that. Bill and I have sat--

MR. BRODSKY: Your Honor, I would ask that the witness--

THE COURT: The question was, You say you are familiar with his reputation as a peaceful, law-abiding citizen. Can you tell us what his general reputation is in that regard?

THE WITNESS: Superb.

Q Are you acquainted with Mr. Ruffin's reputation for honesty and fair dealing?

A Yes.

Q And could you tell us what that reputation is?

A Still superb.

Q Now, are you acquainted with his reputation for truth and veracity?

A Yes.

Hughes-direct

Q Can you tell us what that reputation is.

A The same thing.

Q What is your opinion of his character and reputation?

A Can I answer that now, Judge?

THE COURT: Not with specific instances, but in general terms.

THE WITNESS: Laying everything aside, Bill and I have sat together on certain citizen boards--

MR. BRODSKY: I object.

THE COURT: The question is not how you come to the conclusion that you are about to tell us about.

THE WITNESS: What is my opinion?

THE COURT: If the Government wants to challenge the basis for your opinion they will ask you. Right now you're limited to answering the question as to what is your opinion as to the defendant's character and reputation for truth, veracity, honesty, integrity and law-abidingness and so forth.

THE WITNESS: My sincere and independent opinion is that Mr. Ruffin holds my greatest esteem in each and every one of these areas.

MR. GOLDMAN: No further questions.

Hughes-cross

CROSS EXAMINATION

BY MR. BRODSKY:

Q Mr. Hughes, did you know that Mr. Ruffin was the owner of a piece of property at 1402 Bedford Avenue?

A No.

Q Were you present when he filled out his tax returns?

A No.

MR. BRODSKY: No further questions.

THE COURT: Thank you, Mr. Hughes. You may step down.

MR. BAILEY: Could we approach the side bar?

THE COURT: Surely.

(Side bar)

THE COURT: Yes.

MS. WALKER: We're waiting for the accountants to finish recalculating. I asked them to come in as soon as possible.

THE COURT: Have you run through your character witnesses?

MR. BAILEY: There are some, but we couldn't reach them.

MS. WALKER: We had to change our schedule.

THE COURT: What you're saying is you need

* * *

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2 Associates.

3 The checkbook used to pay all of Rugore's
4 expenses and also received all of its revenues.

5 THE COURT: That account was in Mr. Ruffin's
6 personal name.

7 THE WITNESS: Right, but I was told that that
8 account was being used for Rugore and he was acting
9 as agent for the corporation.

10 THE COURT: All right.

11 THE WITNESS: There were no, in my inspection
12 of this checkbook, personal items such as payment
13 to a dry cleaner or something that would normally
14 go through one's personal check book, there was
15 no rent payment to his landlord or anything of that
16 nature.

17 After examining all the checks, it was clear
18 that this was a business checkbook although it was
19 in his name.

20 Q I take it that the documents created by you
21 set forth the very items and categories of the business
22 expenses--

23 A The cash disbursements are in a chronological
24 fashion. They start off with Check No. 1, written January
25 1st of '70, with the name of the payee, the amount that

1
2 was paid to that payee, and then what we did was to set up
3 a number of columns where we were able to accumulate the
4 real estate tax, the maintenance costs or whatever costs
5 that come up of repetitive nature, such as mortgage payments
6 in a particular year. We set up a column for that.

7 It was very simple to add up the amount of
8 dollars spent for mortgage payments, the amount of dollars
9 spent for real estate taxes, etc.

10 The cash receipts were set up in a similar
11 fashion. They reflected the amounts that were deposited
12 into the checkbook, or into the savings account, since
13 there was a savings account maintained.

14 So we were able to come up with total
15 revenues received for Rugore Associates and total dis-
16 bursements made on behalf of Rugore Associates, and as a
17 result of that we were able to prepare a work sheet, which
18 was used in lieu of a general ledger, since time was of
19 the essence and it would have been -- it would have taken
20 a much longer amount of time to prepare what is known in
21 business as a general ledger.

22 THE COURT: What you did you did for each
23 year and that is included in those exhibits.

24 THE WITNESS: It is shown in these exhibits.

25 MS. WALKER: May I just offer Defendant's

1
2 Exhibit O in evidence.

3 THE COURT: Any objection?

4 MR. GOLDMAN: I would like to ask one or two
5 questions on voir dire on that, your Honor.

6 THE COURT: Proceed.

7 VOIR DIRE EXAMINATION

8 BY MR. GOLDMAN:

9 Q Turning your attention to Column 1974(b).

10 A Yes, sir.

11 Q I notice there is a figure in parentheses,
12 8199. Can you tell me what that figure represents?

13 A The net taxable income for 1974 was computed
14 on two bases. The first basis that we used was assuming
15 that depreciation would be computed on straight line over
16 a 25-year period.

17 Column B represents the depreciation -- the
18 writeoff of the asset, writing off the remaining useful
19 life of the asset, since the asset had been condemned--

20 Q What proof did you have that that asset had
21 been condemned?

22 A The fact that I -- I had no proof.

23 Q O.K.

24 MR. GOLDMAN: I will object to 1974, your
25 Honor.

1 THE COURT: May I see the exhibit, please.

2 (Exhibit handed to the Court.)

3 THE COURT: Overruled. Let it be marked.

4 THE CLERK: Exhibit O received in evidence.

5 (So marked)

6 Q Now, will you tell us, Mr. Kladerman, when
7 did Mr. Ruffin first approach you or mention your working on
8 the tax work -- the books that you just testified to?

9 A I believe it was sometime back in 1972, when we
10 were meeting to prepare payments to subcontractors, on the
11 development that he was involved in, and that was called
12 1410 -- that entity was called 1410 Wedford Avenue Corp.,
13 which was developed and built specifically to be used as a
14 day care center.

15 Q Now, did the delay in actually sitting down
16 and doing the writeup of the documents before you, between
17 the time Mr. Ruffin first spoke to you and the time that you
18 actually started, was that as a result of any fault of Mr.
19 Ruffin?

20 MR. GOLDMAN: I will object to that as leading
21 and drawing a conclusion.

22 THE COURT: Sustained as to form.

23 (Continued on the next page)

Kladerman - Direct/Walker

BY MS. WALKER:

Q Mr. Kladerman, would you please explain to us the reason for the dealy between the first conversation and the time you actually started?

MR. GOLDMAN: If he knows.

THE COURT: First of all we ought to establish what the first conversation was about.

Q What was your first conversation with Mr. Ruffin about?

A We were involved in sitting down at that particular time, the building loan had closed with the National Bank of North America for the construction of this day-care center which is owned by the 410 Bedford Avenue Corporation, and we were involved in making various disbursements to the parties to whom the Corporation owed money to, and subsequent to that meeting Mr. Ruffin mentioned to me that he has another corporation which requires the filing of tax returns and that as soon as we can get this building going and I can find some free time and he can find some free time that we would get to this. However, we had discussed it on numerous other occasions, and as the comptroller of a real estate company it is rare that I get home --

MR. GOLDMAN: I move to strike the comments.

THE COURT: No, overruled.

Kladerman - Direct/Walker

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2 You say you discussed it on numerous other
3 occasions, that is after 1972?

4 THE WITNESS: Yes, we discussed it on two
5 or three other occasions subsequent to that.

6 THE COURT: When did you finally reach an
7 agreement that you were going to do some accounting
8 work for him?

9 THE WITNESS: For Rugore Associates, sir?

10 THE COURT: Yes.

11 THE WITNESS: We finally got down to it in
12 January or February of 1976 due to the fact that I
13 was busy working on two prior jobs --

14 THE COURT: Well, we are not interested in
15 what the reason was.

16 He first spoke to you about it in 1972 but
17 you never agreed with him to do any work for him
18 until 1976?

19 THE WITNESS: We never really got down to
20 it. There was an agreement that I would do it but
21 because of the involvement of each of us --

22 THE COURT: You never got around to doing
23 it?

24 THE WITNESS: We never got around to doing
25 it, that is right.

Kladerman - Cross/Goldman

THE COURT: All right.

MS. WALKER: No further questions.

THE COURT: Cross-examination?

MR. GOLDMAN: I have a couple, your Honor.

CROSS-EXAMINATION

BY MR. GOLDMAN:

Q Mr. Kladerman, when you prepared these sheets, defendant's Exhibit I through N, I believe in evidence.

A J.

Q J.

And you prepared a profit and loss statement, did you take into consideration what the Internal Revenue Code provides relating to earnings of profits, or did you do it on generally accepted accounting principles or on what theory did you do it?

A I think I did it on the basis of both.

Q Well, did you or didn't you?

A Yes, I did.

Q Are you familiar with what provisions in the Internal Revenue Code provide for adjustments to earning of profits?

A Yes.

Q Are you aware that that provision -- by the way it is 312, Provision 312 of Title 26, which provides that you

Kladerman - Cross/Goldman

1
2 are only permitted to use certain kinds of depreciation in the
3 calculation of earnings of profits after 1972?

4 A Yes.

5 Q You are aware of that?

6 A Yes.

7 Q When did you become aware of that?

8 Withdrawn.

9 Isn't it a fact that several nights ago I called
10 that to your attention when you were up at our office and we
11 were interviewing you?

12 A That I wasn't permitted to use a five-year useful
13 life?

14 Q No, I am referring to the adjustments for earnings
15 of profit with regard to a basis on depreciation.

16 A I don't know what you are referring to.

17 MS. WALKER: Your Honor, I must object --

18 MR. GOLDMAN: I will withdraw that, your

19 Honor.

20 BY MR. GOLDMAN:

21 Q Now, you testified you went over Mr. Ruffin's
22 check register with him; is that correct?

23 A Yes.

24 Q And you said there were certain receipts that
25 he showed you or are reflected in his check register; is that

Kladerman - Cross/Goldman

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2 correct?

3 A That were reflected in either the check register
4 or in the savings account.

5 If it wasn't in the check register, we verified it
6 by the bank statements.

7 Q I'm showing you Government's Exhibits in evidence
8 1D, 2I and 3K.

9 You recognize those, don't you?

10 A I have seen them earlier in the day and I saw a
11 xeroxed copy of these up at your office about a week or a week
12 and a half ago.

13 THE COURT: Mr. Goldman, I don't believe 1D
14 is in evidence.

15 MR. GOLDMAN: I'm sorry, your Honor, some of
16 the documents are marked in evidence and some are
17 not.

18 I apologize to the Court.

19 THE COURT: 2I is a 1970 Corporate Tax Return
20 and 3K is the 1971 Corporate Tax Return.

21 THE WITNESS: Right.

22 BY MR. GOLDMAN:

23 Q Mr. Kladerman, on those returns, on line one,
24 where it says Gross Receipts or Gross Income, what is written in
25 on those?

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Kladerman - Cross/Goldman

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A It says none.

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Q None on both of them; is that correct?

4

A Yes, sir.

5

Q And in Mr. Ruffin's check register reflects that

6

he received the income, and he didn't forget, he didn't write

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none in the check register, did he?

8

A Based upon the records that I have examined there

9

was cash in the cash register --

10

Q Did he write none, none in the cash register or

11

did he write down rent receipts?

12

MS. WALKER: I object to the question, the

13

document speaks for itself and it is in evidence.

14

BY MR. GOLDMAN:

15

Q Now, I think you testified that pursuant to

16

what Mr. Ruffin told you this William Ruffin account in the

17

Lafayette Savings Bank was for Rugore Associates; is that cor-

18

rect?

19

A Right.

20

Q And that all the disbursements were for Rugore

21

Associates; is that correct?

22

A Basically it related to the business of Rugore

23

Associates, there may have been a couple of exchange checks

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which --

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Q I think you also testified that for the most

Kladerman - Cross/Goldman

part there were no personal items involved; is that correct?

A For the most part, yes.

Q Now I show you a group of checks from Exhibit, Government Exhibit 21, check 264, 275, 285, 298, 339, 347, 367, 378 and 409, can you tell us who all those checks are made payable to?

A To the Ford Motor Credit Corporation.

Q I will you to look on the endorsements on the back.

A Payment number 5, payment number 7, et cetera, et cetera, it looks like these are payments on some sort of an instalment obligation.

Q For an automobile?

A Well, I would have to check to see how I recorded it in the cash disbursements.

Q Well, would you first tell us whether this was something other than a business expense for Rugore Associates, from what you know?

A This may have been a loan.

Q When you say a loan, when was it decided it was a loan? Is that your own decision that you made in 1976 when you prepared these sheets?

A No.

Q When did you make that decision?

Kladerman - Cross/Goldman

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2 A When I was told about this disbursement and I
3 questioned the nature of the disbursements and I was told that
4 it was a loan.

5 Q Well, you went over the books, didn't you, the
6 cash receipts books?

7 A Right.

8 Q Okay.

9 These checks are dated --

10 A Those are cash disbursements.

11 Q These are cash disbursements?

12 A Right.

13 Q You also had the cash register which you also
14 stated was a cash receipts book for all practical purposes.

15 A I was given --

16 Q Other than the Brooklyn Savings account, I am
17 sorry.

18 A I had the savings account, copies, I had xerox
19 copies of the savings account whereby I saw the ins and outs
20 of that particular savings account.

21 Q At any rate, it wasn't until 1976 that you found
22 out that this was "a loan," according to Mr. Ruffin?

23 A Those checks that you are speaking about?

24 Q Yes.

25 A They were classified as a loan, yes.

Kladerman - Cross/Goldman

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Q You classified them as a loan; is that correct?

A Right.

Q Is there anywhere in any document that you saw in which Mr. Ruffin ever paid this loan back?

A There were repayments of loans.

Q For this loan, for this loan.

A Not specifically but there were monies advanced to the Corporation by Mr. Ruffin.

Q Now, are you familiar with the 1410 Corporation, aren't you?

A Yes, certainly.

Q That is a separate and distinct legal entity from the Rugore Associates or 1402?

A Yes.

Q Is that correct?

A Yes.

Q And you did certain work for them, didn't you, for 1410?

A For 1410, yes, I did.

Q I am showing you two checks from Exhibit 21, numbers 269 and 363, and I will ask you if you recognize those two checks.

A Yes.

Q And you received those checks, didn't you?

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A Another entity.

Q He didn't tell you what it was?

A It was another real estate entity of his.

Q Now, at any time during this period of time that Mr. Ruffin asked you to help him -- in these several conversations -- to prepare his tax returns did you ever tell him now you wouldn't do it?

A I never said no, but no work can be done without having something to -- you can't prepare any tax returns without books or records.

Q Did Mr. Ruffin ever come to you and say, here are all my records when can we get together?

A I believe the time I saw the records was in January or February of '76, the exact date of which escapes me.

MR. GOLDMAN: No further questions.

THE COURT: Will there be any redirect?

MS. WALKER: Can you give me just one minute, your Honor?

(Pause.)

MS. WALKER: Your Honor, the Government has the 1410 Corporation books which I would seek through redirect to have this witness identify to verify that these were verified loans to 1410.

4 1
2 THE COURT: The witness testified that he
3 made correspondening entries in the 1410 books
4 at the time he recorded these as loans on his sheets.
5 I don't think there's any challenge to that.

6 MR. GOLDMAN: No. I think the testimony was
7 that it was later on.

8 THE COURT: It was done in 1976.

9 MR. GOLDMAN: That's our position.

10 THE WITNESS: No. Part of the recording of the
11 loans that were made by Rugore to 1410 was done in
12 various intervals for specific reasons.

13 Payments were made to the architect and to make
14 sure I wouldn't pay more than he was entitled to, we
15 recorded that amount in possibly 1973 or '74. There
16 were payments made for land which were recorded
17 sometime in '73 and '74. We finally did put all of
18 the loans on the books, I believe, in '74 or '75 that
19 were made on behalf of 1410 by Rugore.

20 THE COURT: Mr. Kladerman, the entries made in
21 the various books, whosever they were, when were the
22 entries themselves made?

23 THE WITNESS: They were made at the year end
24 tax closings.

25 You see, 1410 --

5 1
2 THE COURT: Did you do other work for Mr.
3 Ruffin prior to 1974?

4 THE WITNESS: I was doing 1410 Bedford
5 Avenue Corporation which is the other entity.

6 THE COURT: Some of these loans then were
7 recorded in the 1410 books prior to the work you did
8 in connection with the Rugore books in January and
9 February of 1976?

10 THE WITNESS: That's right.

11 THE COURT: That's what you wanted to establish?

12 MS. WALKER: Yes, your Honor.

13 THE COURT: We're not going to do it this
14 afternoon.

15 Work that out overnight.

16 We'll adjourn now until 9:30 tomorrow morning.
17 Please do not discuss the case amongst yourselves
18 during the recess.

19 (Jury excused.)

20 * * *

1 MR. BRODSKY: Your Honor, to the best of my
2 knowledge he knows absolutely nothing about the
3 cooperation.

4 THE COURT: Well -- No, I will permit it.

5 MR. BRODSKY: Very well.

6 (The trial then proceeded within the hearing
7 of the jury.)

8 A N D R E W R O S E N B L A T T , having been previously
9 duly sworn, resumed the stand and continued to testify
10 as follows:

11 THE CLERK: Please be advised that you are
12 still under oath, Mr. Rosenblatt.

13 DIRECT EXAMINATION

14 BY MR. BAILEY:

15 Q Mr. Rosenblatt, am I correct that you are a
16 revenue agent employed by the Internal Revenue Service?

17 A That is correct.

18 Q Mr. Rosenblatt, did you meet with the defendant
19 William Ruffin on November 4, 1975?

20 A I believe that is the date, yes.

21 Q Mr. Rosenblatt, I show you Government's exhibit
22 2-I for identification and direct your attention to the green
23 sheet that is attached thereto.

24 THE COURT: 2-I, is that for identification?

25 MR. BAILEY: I'm sorry, in evidence.

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THE COURT: In evidence.

MR. BAILEY: I'm sorry, your Honor.

A Yes.

Q Do you recognize the document?

A Yes, I do.

Q Could you tell us what that document is?

MR. GOLDMAN: Objection.

MR. BRODSKY: Objection, your Honor.

THE COURT: What is the ground?

MR. BRODSKY: It has to do with the civil tax liability and it is not relevant in this trial.

THE COURT: It is still in evidence, he is entitled to have it explained.

Overruled.

A The form is a consent-to-extend the Statute of Limitations for a civil tax assessment.

Q Do you know the circumstances of Mr. Ruffin signing that document?

A Yes, I do.

Q Isn't it a fact that you requested that Mr. Ruffin sign that document on November 4, 1975?

A Yes.

Q And isn't it a fact that he signed it?

A That is right.

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Q Mr. Rosenblatt, I show you Government's exhibit 3-K in evidence and direct your attention to the green sheet which is attached thereto.

Can you identify that document?

A Yes, I can.

Q Could you tell us what that document is?

A The same form as on the prior exhibit.

Q And this is for the year 1971; is that correct?

A '71, right.

Q And are you familiar with the circumstances whereby Mr. Ruffin signed that document?

A Yes, I am.

Q Did he sign that document on November 4, 1975?

A Yes, he did.

Q And was it in your presence?

A That is correct.

Q And was it at your request?

A Yes.

THE COURT: May I see one of those, please?

(Document handed to his Honor.)

MR. BAILEY: No further questions, your Honor.

THE COURT: Any cross?

MR. BRODSKY: Yes, your Honor.

CROSS-EXAMINATION

BY MR. BRODSKY:

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2 Q Mr. Rosenblatt, did Mr. Ruffin refuse to sign
3 any other of those waivers for any other tax returns?

4 A Yes, he did.

5 Q And with respect to what tax return did he
6 refuse to sign the waivers?

7 A With respect to his personal income tax returns.

8 MR. BRODSKY: No further questions, your Honor.

9 REDIRECT EXAMINATION

10 BY MR. BAILEY:

11 Q Could you tell us what Mr. Ruffin said to you
12 when he refused to sign the waiver?

13 MR. BRODSKY: Objection, your Honor.

14 THE COURT: I haven't heard the question yet.

15 MR. BRODSKY: Whatever Mr. Ruffin said at that
16 point I would object to.

17 THE COURT: Overruled.

18 Q Would you tell us what Mr. Ruffin said to you
19 when he refused to sign the waivers for his personal?

20 A I don't remember his exact words.

21 Q Isn't it a fact that he told you --

22 MR. BRODSKY: Objection, your Honor, leading.

23 THE COURT: Overruled.

24 Q Isn't it a fact that he, Mr. Ruffin, told you
25 that in his opinion his personal income tax returns were

1
2 absolutely correct and that --

3 A I don't recall if those were his exact words, he
4 might have said something to that effect, though.

5 Q But he did say something to that effect?

6 A Yes.

7 MR. BAILEY: May I have this marked for
8 identification as the next defendant's exhibit?

9 THE CLERK: Two page document marked for
10 identification as defendant's exhibit P.

11 Q Mr. Rosenblatt, I show you defendant's exhibit
12 P and I ask you if you have ever seen that document before?

13 A Yes, I have.

14 Q Can you tell us what the document is?

15 A Okay.

16 Pursuant to a request of Mr. Ruffin to sign
17 the form 872 to extend the Statute of Limitations, on I
18 believe it was the 1972 personal tax return, we have an IRS
19 form that we send out along with the green sheet, you know,
20 requesting that it be signed, and Mr. Ruffin responded with
21 this note.

22 Can I read it?

23 Q No, it is not in evidence.

24 MR. BAILEY: Your Honor, the defendant would
25 offer exhibit P in evidence.

* * *

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2 A Yes.

3 Q By the way, you spoke about cumulated earnings
4 for Rugore Associates?

5 A Yes.

6 Q Did you consider the cumulated earnings tax
7 in that?

8 A No, I did not, they --

9 Q Okay, fine.

10 A The reason why --

11 Q Fine.

12 THE WITNESS: I think my explanation will
13 help qualify it.

14 A There are certain exemptions for the accumulated
15 tax, and there would have to be a hundred thousand dollar
16 exemption, and that is why I didn't consider that issue.

17 THE COURT: It didn't reach that level?

18 THE WITNESS: No, it never reached that level.

19 Q Did you consider the fact that Mr. Ruffin
20 had all of his money in a personal account rather than in
21 a corporate account?

22 As agent for the corporation, yes.

23 Q When did you determine he was an agent for the
24 corporation?

25 A Because this is what I was told.

Stewart-cross-Goldman

Do you remember he said Drew Equity or some kind of equity?

THE COURT: We are pretty much bound as far as the jury is concerned with what the witness has said. You can have other witnesses correct him. Or redirect him if you want.

MRS. WALKER: It is okay.

THE COURT: So far he has said that it was a separate corporation.

MRS. WALKER: Well --

THE COURT: All right.

(The trial then proceeded within the hearing of the jury.)

THE COURT: Mr. Stewart, with respect to the payment to the City Collector with respect to 1418 Bedford, you are saying now that was a charge to expenses rather than a loan?

THE WITNESS: Yes, it is.

THE COURT: All right.

MR. GOLDMAN: May I continue, your Honor.

THE COURT: Yes.

BY MR. GOLDMAN:

Q So what you are telling us then, is that Rugore Associates, according to these work papers, paid the expense

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Stewart-redirect

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MR. GOLDMAN: Objection, your Honor.

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THE COURT: Sustained.

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Q Are those returns wrong?

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A Yes, they are.

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Q Now, that's based on your professional tax

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knowledge and your previous experience as a revenue agent for

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IRS?

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A Yes, it is.

10

Q What's the normal practice if a return is wrong

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in the course of the Internal Revenue Service--

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MR. GOLDMAN: Objection your Honor. It's

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certainly beyond cross and he has not been in the

14

Service for a number of years, so I don't think he

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would know what the procedure would be.

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THE COURT: Is there such a thing as a normal

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practice as to an erroneous return?

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THE WITNESS: I would think so.

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THE COURT: File an amended return.

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THE WITNESS: File an amended return or come

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down to the local office to explain the items in

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question.

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Q Now, one other thing on cross-examination.

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You were asked about certain items being designated

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loans. I don't want to belabor it but do you recall being

EK/tb

AFTERNOON SESSION

1pml

December 16, 1976

1:55 P.M.

THE COURT: Are you ready to proceed?

MRS. WALKER: I am ready to proceed.

THE COURT: Bring in the jury.

(The jury then took its place in the jury box.)

THE COURT: Next witness, Mrs. Walker.

MR. BAILEY: Mr. Wangenbach.

K E N N E T H V A N C E W A N G E N B A C H , called as
a witness on behalf of the defendant, having been duly
sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. BAILEY:

Q Mr. Wangenbach, will you tell the Court and
jury your business or occupation?

A I am a staff engineer with the Exxon Oil
Company, United States of America.

Q And how long have you been with the Exxon
Oil Company?

A Twenty-eight and a half years.

Q Are you familiar with the defendant William
Ruffin sitting over here at this table?

A I am.

Q How long have you known him?

Wangenbach - direct

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2 A I have known him for 22 years, I would say
3 20 to 22, on and off.

4 Q Now, are you acquainted with his general
5 reputation in the community in which he resides as being a
6 peaceful and law-abiding citizen?

7 A I am. He is.

8 Q Are you acquainted with the general reputation
9 of the defendant in the community with respect to his
10 honesty and fair dealing in business?

11 A Very much so, he was always considered an honest
12 man.

13 Q Are you acquainted with the general reputation
14 of the defendant for his truth and veracity?

15 A At the time I have known him he has been nothing
16 but truthful to me.

17 Q What is your opinion of his character and
18 reputation?

19 A I would say splendid.

20 MR. BAILEY: No further questions, your Honor.

21 THE COURT: Cross-examination?

22 CROSS-EXAMINATION

23 BY MR. BRODSKY:

24 Q Mr. Wangenbach, is it?

25 A That's right, Wangenbach.

Wangenbach - cross

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Q Now, sir, you have known by your testimony as to Mr. Ruffin for some 20 to 22 years?

A Yes.

Q That puts us somewhere in 1954?

A Just about, yes.

Q And how did you come to meet Mr. Ruffin, sir?

A I served with Mr. Ruffin in the United States Reserve program.

Q And where was that, sir?

A Fort Tilden, Long Island.

Q And since that time, have you maintained your contact with Mr. Ruffin?

A I have seen him off and on, yes.

Q And did you come to know, sir, what his profession or occupation was?

A He was in the real estate business with the post office, I believe.

Q And did you know what his duties were with real estate?

A No, I didn't get to that.

Q Sir, did you come to know during the 20 to 22 years that you knew Mr. Ruffin that he had completed all the course work for a Master of Business Administration in real estate?

MR. BAILEY: Objection, your Honor.

MR. BRODSKY: Your Honor, this goes to the weight of his opinion and the depth of his knowledge of the defendant.

THE COURT: Overruled. I will permit it.

Q Sir, may I rephrase the question:

Did you come to know that Mr. Ruffin had completed all the course requirements for a Masters in Business Administration specializing in real estate at the Baruch College of the College of the City of New York?

A I knew he was attending, I do not know for what.

Q You knew he was taking courses?

A Yes, I did.

Q Did you know, sir, that Mr. Ruffin took a course in January of 1960 in taxation of real property?

MR. BAILEY: Objection, your Honor.

THE COURT: I will permit him to answer if he knows.

A I did not, no, sir.

Q And did you know, sir, that Mr. Ruffin took courses in accounting 101 and 103?

MR. BAILEY: Objection.

THE COURT: Same ruling, overruled.

A I did not know those specifics, no, sir.

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Q But you knew he was taking courses leading towards a Masters Degree?

A Yes, I knew.

Q Did you continue, sir, to see Mr. Ruffin throughout this period of time in the last 22 years at various Reserve meetings?

A That is right, and in my home.

Q And he has been in your home?

A Yes.

Q Now, sir, you indicated that you had occasion to become familiar with Mr. Ruffin's reputation for honesty; is that correct?

A That is right.

Q And I take it then that that means that you discussed specifically whether Mr. Ruffin was an honest person with other people?

A I don't believe so, no.

Q You did not discuss it?

A I did not discuss the fact that he was honest or dishonest with anybody.

Q Well, what then is the basis for your saying that you are familiar with his reputation for honesty if you didn't discuss it with anyone else?

A I have seen him operate, I didn't have to ask

6 1 people, I was in the Reserve with Mr. Ruffin.

2
3 Q Okay. Then is it fair to say, sir, than rather
4 really talking about your knowledge of Mr. Ruffin's reputa-
5 tion, you were really testifying here upon your personal
6 knowledge of Mr. Ruffin over the 20 or 22 years that you
7 have known him?

8 A I have known him among other people who have
9 the same ideas as I did, I would say.

10 Q That is my question, sir, if you know that
11 other people have the same ideas that you have, how do you
12 know that if you didn't discuss it with them?

13 A Well, I didn't consider specifics, discussing
14 his honesty. I have seen him operate within the Reserve
15 area and in which he was totally honest.

16 Q So you are testifying from personal knowledge,
17 not with respect to what other people have said about him?

18 A No, not really.

19 Q Now, directing your attention specifically, sir,
20 to your personal knowledge of Mr. Ruffin's honesty and
21 integrity, did you come to know, sir, during those 22 years
22 that sometime in '68 or '69 Mr. Ruffin bought a piece of
23 property known as 1402 Bedford Avenue?

24 A No, sir.

25 Q Did you know, sir, that there came a time in

1
2 1969 that Mr. Ruffin transferred that property to a
3 corporation of which he was the sole stockholder named
4 Rugore Associates, Inc.?

5 A No, I did not.

6 Q And, sir, were you ever present when Mr. Ruffin
7 completed any of his personal or corporate tax returns?

8 A Absolutely not.

9 MR. BRODSKY: No further questions, your Honor.

10 THE COURT: Any redirect?

11 MR. BAILEY: Just a minute, your Honor.

12 REDIRECT EXAMINATION

13 BY MR. BAILEY:

14 Q Mr. Wangenbach, am I correct that you have never
15 had occasion to discuss with Mr. Ruffin what courses he did
16 or did not take?

17 A I knew he was taking advanced courses, but I
18 was not --- We didn't discuss that in my relations with
19 Bill Ruffin.

20 Q Over the years that you have known Mr. Ruffin,
21 in the Reserve and out of the Reserve, you had him to your
22 home and other things, now particularly in your years in the
23 service has any other individual come to you and said,
24 Mr. Ruffin is dishonest?

25 A Absolutely not.

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Has anyone ever come to you and said, Mr. Ruffin
is a liar?

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No, sir.

MR. BAILEY: No further questions.

THE COURT: Thank you, Mr. Wangenbach.

You may step down.

(Witness excused.)

THE COURT: Next witness.

(continued next page)

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MRS. WALKER: Dr. Kenenth Erskine.

K E N N E T H F. E R S K I N E, called as a witness
on behalf of the defendant, having been duly sworn by
the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. BAILEY:

Q Dr. Erskine, will you state your business or
occupation?

A Yes, but may I make a correction, sir, I have
not finished by doctorate so I am Mister.

Q I'm sorry.

A I am a social worker administrative.

Q For whom?

A For the Columbia School of Public Health which
has affiliations with the Harlem Hospital Center.

Q How long have you held such a position?

A A bit over two years.

Q Do you know the defendant William Ruffin seated
at this table to my right?

A YES, I do.

Q How long have you known him?

A Since about 1938.

Q It is almost 40 years: correct?

A Yes.

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2 Q During that time have you become acquainted
3 with his general reputation in the community for being a
4 peaceful and a lawabiding citizen?

5 A Yes.

6 Q And what is that reputation?

7 A He is considered not only a peaceful person
8 but a peace maker kind of person, and he is well regarded
9 and has been well regarded in the community that he has lived
10 during the time that I have known him.

11 Q Have you become acquainted with his general
12 reputation in the community for honesty and fair dealing?

13 A Yes.

14 Q And what is that?

15 A As I said, he is considered a peace maker and
16 an honest person and a fair person.

17 Q Are you acquainted with his general reputation
18 in the community for being truthful?

19 A Yes.

20 Q And what is that?

21 A Always truthful.

22 Q What is your opinion of his character and
23 reputation?

24 A I think he has a high character, a sterling
25 character and a good reputation.

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2 MR. BAILEY: No further questions.

3 THE COURT: Cross-examination?

4 MR. BRODSKY: Yes.

5 CROSS-EXAMINATION

6 BY MR. BRODSKY:

7 Q Mr. Erskine, your knowledge of Mr. Ruffin over
8 the last almost 30 years, has that been social or business
9 or both?

10 A Primarily social --

11 Q And --

12 A We did some business when we belonged to a
13 social organization together.

14 Q And would you say that you had close relation-
15 ships with Mr. Ruffin or just an ordinary social relation-
16 ship?

17 A I would say close.

18 Q And would that mean, sir, that you would see
19 him often during a given year?

20 A Often.

21 Q Did he come to your house and did you go to his
22 house?

23 A Yes.

24 Q So, sir, did you then come to know that Mr.
25 Ruffin was the owner of a piece of property at 1402 Bedford

1 Avenue?

2 A No.

3 Q Did you then come to know, sir, that sometime
4 in 1969 he deeded this piece of property at 1402 Bedford
5 Avenue to a company of his own called Rugore Associates, Inc.?

6 A No.

7 Q Do you know what Mr. Ruffin's profession or
8 occupation was, sir, during the period from, let us say, 1968
9 through the present?

10 A My knowledge as to his most recent occupation
11 has been that of finding, researching real property for the
12 post office, purchasing or something of that kind.

13 Q And, sir, did you come to know that Mr. Ruffin
14 had pursued studies leading to a Master's in Business
15 Administration at the City College of New York?

16 A I knew that Mr. Ruffin was pursuing additional
17 courses, as was I, and we discussed the fact that it was
18 difficult and we should keep trying to carry on, but these
19 specifics we hadn't really exchanged.

20 Q Did you know he was pursuing basically graduate
21 studies?

22 A Yes.

23 Q And did you know also, sir, that generally what
24 he was studying was orientated towards the area in which he was
25

1
2 employed, that is real estate taxation.

3 A I had that impression --

4 MR. BAILEY: I object --

5 THE COURT: Overruled.

6 A I had the impression but I really didn't know.

7 Q You didn't know?

8 A I had the impression that he would be taking,
9 as I would, courses relating to his work, but I didn't know
10 what courses he was taking.

11 Q And, sir, did you come toknow during this period
12 of time whether Mr. Ruffin was doing well in school?

13 MR. BAILEY: Objection.

14 THE COURT: Sustained.

15 BY MR. BRODSKY:

16 Q Sir, with respect again to the 1402 Bedford
17 Avenue, did you have any knowledge or did you ever hear it
18 discussed in the community in which you determined Mr. Ruffin's
19 reputation that Mr. Ruffin on behalf of himself initially
20 and later on behalf of Rugore Associates, Inc., was receiving
21 rental payments in the amount of \$30,000 a year?

22 MR. BAILEY: Objection.

23 THE COURT: Overrurled.

24 A No.

25 Q Mr. Ruffin never told you that, or about that?

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A We didn't discuss that.

Q And, sir, were you ever present when Mr. Ruffin completed his own personal income tax returns submitted to the Federal Government?

A No.

Q Or the corporate income taxes for Rugore Associates?

A No.

MR. BRODSKY: I have no further questions, your Honor.

THE COURT: Thank you, Mr. Erskine, you may step down.

MR. BAILEY: I have one or two questions, your Honor.

THE COURT: I am sorry.

REDIRECT EXAMINATION

BY MR. BAILEY:

Q Mr. Erskine, would there be any occasion for you being present when Mr. Ruffin filled out his personal income tax returns?

A I am not considered an expert on tax returns.

Q Would there be any occasion for you to be present when Mr. Ruffin filled out the tax returns of Rugore Associates?

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2 records of the County of Kings, State of New York?

3 A Yes, sir, I did.

4 Q And I ask you, please, to tell the ladies and
5 gentlemen of the jury if you had occasion to examine any
6 records pertaining to 1418 Bedford Avenue, Brooklyn, New
7 York?

8 A Yes, I did.

9 Q Please tell the ladies and gentlemen of the
10 jury what it was that you examined, what official records
11 you examined over the luncheon hour?

12 MR. BAILEY: Objection, your Honor.

13 THE COURT: On what ground?

14 MR. BAILEY: May we approach at side bar?

15 THE COURT: Yes.

16 (The following occurred at side bar without
17 the hearing of the jury.)

18 MR. BAILEY: Your Honor, I will object to this
19 witness testifying as to what the records say or don't
20 say.

21 The Government has had an opportunity to bring
22 any official records that they want into court and to
23 offer them into evidence and they have chosen not to,
24 and your Honor, we should not have this witness testify
25 to what he did or didn't see in the records, it is

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2 objectionable and it is prejudicial.

3 MRS. WALKER: Not only that, there is no
4 evidence of him being qualified to examine title
5 searches.

6 I might say this:

7 That we too have had someone look and search
8 the title --

9 THE COURT: There really shouldn't be a
10 dispute over who the title is in at the moment.

11 MRS. WALKER: I can tell you right now, your
12 Honor, the only thing that we are going to get into,
13 and let me say we cannot determine from the record
14 what name is on the deed --

15 THE COURT: Why not?

16 MRS. WALKER: Well, according to -- go ahead,
17 Mr. Bailey --

18 MR. BAILEY: No, go ahead.

19 MRS. WALKER: The mortgage record requires
20 Rugore Associates to pay the taxes, and that is the
21 question here. It is the mortgage which requires
22 Rugore to pay the taxes and that is what governs here.

23 THE COURT: I assume he has with him no copies
24 of the documents?

25 MR. BRODSKY: There was insufficient time to

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2 obtain the document, we asked him to get certified
3 copies of the records but there was insufficient time,
4 the people in the Clerk's office told him they would
5 not be able to provide them to him today, so he has
6 come back with notes that he made from his personal
7 examination of the records.

8 Your Honor, they reflect not only as 1418
9 Bedford Avenue not owned by either Mr. Ruffin or
10 Rugore Associates, but in addition Rugore Associates
11 and Mr. Ruffin each of the mortgagors and they hold --

12 MR. GOLDMAN: Mortgagees.

13 MR. BRODSKY: Mortgagees, I never did under-
14 stand the distinction, they hold mortgages on the
15 property and they were purchased with money from this
16 account. In other words, the one that is now in Mr.
17 Ruffin's name where he receives payment from the title
18 owner of that premises was purchased with the \$6,500
19 that was the subject of the testimony just before
20 lunch.

21 THE COURT: I thought that was \$3,600.

22 MR. GOLDMAN: Those were the taxes.

23 MR. BRODSKY: Those were the taxes.

24 There was a payment down and Mrs. Walker brought
25 it out on her redirect, I guess it was, of Mr. Stewart,

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2 that in 1972 \$6,500 was expended by Rugore Associates
3 and that was used by the mortgage that is now in
4 Mr. Ruffin's name.

5 MRS. WALKER: I beg your pardon, your Honor,
6 excuse me --

7 THE COURT: You are saying that Rugore Associates
8 was the purchaser of the mortgage and not of the
9 property?

10 MR. BRODSKY: That is correct, that is correct,
11 your Honor.

12 MR. BAILEY: Your Honor, for this witness to
13 testify about what some mortgage record does or does
14 not say is additionally hearsay.

15 If they have the deed, they can offer the
16 deed.

17 THE COURT: I grant you it is hearsay, but the
18 question was raised this morning about conflicting
19 testimony of your accountant which can be summed up to
20 this point that the only property owned by Rugore
21 Associates was 1408. Now it comes out through the
22 testimony that this money was used to purchase an
23 investment.

24 MRS. WALKER: That is right.

25 MR. BAILEY: Can I just note for the record --

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2 MRS. WALKER: A mortgage investment --

3 MR. BAILEY: Excuse me, your Honor.

4 May I have noted for the record that Mr.
5 Kladerman's worksheets have been in the possession of
6 the prosecution since last Thursday, and the worksheets
7 reflect this investment, the worksheets reflect the
8 tax deductions for 1418 and the Government had plenty
9 of notice to put somebody on and testify.

10 Your Honor, this testimony is hearsay and is
11 prejudicial, they knew over a week ago and they could
12 have had the record here.

13 THE COURT: They have made an attempt over the
14 luncheon hour to get the records.

15 I find the records, for purposes of testimony
16 right now, and hopefully we are going to get this
17 case to the jury sometime this afternoon, that the
18 document itself is unavailable, and what he is testify-
19 ing to 'certainly should be no surprise to the
20 defense, if he testifies accurately, but if he
21 testifies inaccurately, well, we will take an adjourn-
22 ment and permit you to go over to the County Clerk's
23 office and do whatever further research has to be done
24 before we close the evidence in the case.

25 MRS. WALKER: Your Honor, may I just note an

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2 exception that this is not proper rebuttal?

3 THE COURT: Oh, yes, it is.

4 MRS. WALKER: Your Honor, if the Court would
5 take the time to look at the documents that are in
6 evidence as Government Exhibits, specifically check
7 351, which generated this discussion, it was not the
8 purchase of an equity interest, it was the purchase of
9 the mortgage interest.

10 THE COURT: But what has generated this dis-
11 cussion in the presentation of this evidence are the
12 worksheets of Mr. Kladerman and the testimony by Mr.
13 Stewart just before lunch that this money, that
14 particular check, was for an investment --

15 MRS. WALKER: Yes.

16 THE COURT: And now we want to establish what
17 kind of an investment we are talking about.

18 MRS. WALKER: You see, your Honor, the only
19 thing that I heard him say is, he said if there were
20 rebuttal they were going to rebut with something to
21 dispute that, but your Honor, what I'm saying to you --

22 THE COURT: They are entitled to explain it and
23 elaborate on it if they wish.

24 MRS. WALKER: Well, if the Court is going to
25 rule that it is going in, we will go ahead and it will

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2 take more time, obviously it will take more time.

3 THE COURT: I am not drawing any inferences
4 and I don't know what inference a jury could draw or
5 even if they will be permitted to, but there is nothing
6 wrong with buying a mortgage, it is a perfectly legal
7 thing, there is nothing wrong with paying taxes on
8 property and preventing somebody else from going in
9 and buying it.

10 MRS. WALKER: You have to pay taxes, but --

11 THE COURT: Now what I think it all adds up to
12 is they are entitled to explain it, if they want to
13 under the circumstances here.

14 Now, in order to shorten the time, I will permit
15 this witness to testify as to what he found as a
16 matter of record. If he is lying, you will know it and
17 you can hang him from the ceiling.

18 MRS. WALKER: May I just voir dire him on his
19 experience in checking records and titles and on what
20 records he is going to base his testimony on?

21 THE COURT: Yes.

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23 (Continued next page)

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MRS. WALKER: I don't recall the gentleman's name.

MR. BRODSKY: Mr. Hamill.

Q I believe you testified that you were a special agent for the Internal Revenue Service?

A Yes, ma'am.

Q And how long have you been so employed?

A Approximately four years.

Q About four years?

A Yes.

Q And what division or branch of IRS are you assigned to working?

A I am with the Intelligence Division

Q Now, in the course of your duties with that division, well, what do they encompass, sir?

A Investigating alleged criminal violations of the Internal Revenue laws.

Q You testified that you have a doctorate for law?

A Yes, ma'am.

Q Now, can you tell us when you received your doctorate in law?

A Approximately four years ago.

Q Are you admitted to the bar?

A No, ma'am.

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Q You have never taken the bar examination?

A I took it once.

Q And have you ever had any occasion to work with real estate and title searches?

A Yes, through this job, and I have also worked in the Trust and Estate department of a bank in New York City in connection with the administration of estates and trusts, and at that time I also had the opportunity to view and study many deeds and documents relating to real property.

Q Am I correct that going and searching titles and examining deeds and trusts, that those are two completely separate and distinct transactions? Am I correct?

A Oh, yes, ma'am, yes, ma'am.

Q One has nothing at all to do with another; isn't that right?

A That is right, but I have searched titles dozens of times.

Q That is what I am asking, about the searching of titles.

A Yes, ma'am.

Q Now, you have searched titles in which county?

A Oh, Queens, Kings, New York County, Rockland County, Nassau County --

Q And am I correct --

* * *

Hamill - voir dire/Walker 579

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2 THE WITNESS: I went to the block and lot
3 ledger, I obtained the deed number and date, from there
4 I actually viewed the deed on microfilm, which
5 indicated that the premises were in fact 1418 Bedford
6 Avenue, Brooklyn.

7 Q And then the information that you are about to
8 testify to, you got off microfilm?

9 A Yes, ma'am, all the deeds and records there
10 are kept on microfilm.

11 Q Did you request a copy of what you are about
12 to testify to?

13 A Yes, ma'am.

14 Q And what happened?

15 A Two things happened -- you want me to go into it
16 in detail?

17 Q I'm asking you why --

18 A Okay, I am sorry.

19 Q (cont) -- you were not able to obtain the
20 document rather than testifying to what you saw on microfilm.

21 A First of all, there was a time factor, and
22 secondly, they wanted to charge me \$36 and I didn't have \$36
23 in my pocket.

24 THE COURT: What was the time factor?

25 THE WITNESS: They said they couldn't possibly

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get the instruments prior to Monday.

THE COURT: They don't work very hard.

THE WITNESS: I don't know that, your Honor.

Q Am I correct that you say that it is going to cost \$36 to get a copy of all of the documents that the microfilm deals with as it relates to this property that you were about to testify to?

A Yes, ma'am.

Q Well, how many documents did you examine on microfilm?

A To the best of my recollection, I believe there are seven documents, I may be mistaken, there may have been six, there may have been eight, but to the best of my recollection there were seven.

Q Now, am I correct that you were about, if the Court so rules, to testify as to what each of those seven or eight documents would state if you had actually gotten the documents?

A Yes, ma'am, I took notes in connection with all the documents I examined.

Q May I see the notes?

A Certainly.

(A document was handed to Mrs. Walker.)

Q Incidentally, did you count the number of pages

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that the microfilm pictures would turn out to be in terms of pages?

A Yes, it cost \$36, there would have been eighteen pages because it was \$2 a page.

MRS. WALKER: May I just mark this for identification, please?

THE CLERK: One page document marked for identification as defendant's exhibit U.

Q Now, is it your testimony that this one page document marked defendant's exhibit U for identification, written on the front and back, contains all the information that was on the eighteen pages that you didn't have time or money to get?

A Yes, ma'am, but may I only state that I summarized these documents.

Q So what it really amounts to, therefore, would be that you extracted from those documents certain parts of them; isn't that correct?

A Yes, ma'am.

MRS. WALKER: I have an objection.

THE COURT: Objection overruled.

MR. BRODSKY: We would move into evidence first of all the defense exhibit U, and I don't care whether it is a Government or a defense exhibit.

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Q And had not been recorded?

A Had not been recorded as of yet.

THE COURT: Same ruling.

THE CLERK: Defendant's Exhibit U received
in evidence.

(So marked.)

MS. WALKER: I have no further questions on
voir dire.

(Conclusion of Voir Dire Examination by
Ms. Walker.)

DIRECT EXAMINATION

BY MR. BRODSKY CONTINUING:

Q Now, back to the original question, please tell
the ladies and gentlemen of the Jury and the Court what if
anything the official records of the Kings County Recorder
of Deeds -- or whatever its official designation is -- has
with respect to the ownership or other financial interest in or
affecting the property at 1418 Bedford Avenue, Brooklyn,
New York.

MS. WALKER: May I note my objection in terms
of the scope of it, in terms of it being limited to
what defendant contended in its defense as to the
defendant Rugore's interest as to the property in
question.

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2 assignment of --

3 Q May I stop you just for a moment --

4 A Certainly --

5 Q (continuing) -- are you familiar with what the
6 effect of these three instruments you have just described would
7 be?

8 MS. WALKER: Now, your Honor, that is objected
9 to.

10 THE COURT: Overruled. I will permit him
11 to interpret it.

12 A Yes sir.

13 Q Please tell the ladies and gentlemen of the Jury
14 what the effect of those would be.

15 A Yes, sir.

16 Atlas Properties would now be the owner of
17 premises described in the deed as 1416 through 1424 Bedford
18 Avenue, Brooklyn, New York.

19 As I said, Atlas would, in effect, now be the
20 owner. They would, however, be indebted to Alice F. Peppard
21 and Philip G. Reilly in the sum of \$26,000 and indebted to
22 Drew Equity and Funding Corporation in the amount of \$8,000.

23 Q Please continue then, sir.

24 What is the next transaction?

25 A The next transaction I viewed was an assignment --

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A This is an assignment of the same \$26,000 mortgage originally dated March 13, 1968.

This assignment was made by Howard Schwartz to William M. Ruffin, 21 Irving Place, Brooklyn, New York.

Q And the date?

A July 11, 1972.

Q Is there a consideration listed for that transaction?

A \$6,705.

Q What was the effect of that transaction, sir, with respect to the property at 1418 Bedford Avenue?

A Atlas would remain the owner but would now become indebted to William Ruffin.

Q In his personal capacity?

A Yes.

MS. WALKER: Your Honor, I object to that.

THE COURT: Did the deed or the assignment run to William Ruffin?

THE WITNESS: The assignment ran directly to William Ruffin.

THE COURT: Do you have the address?

THE WITNESS: 21 Irving Place, Brooklyn, New York.

THE COURT: I will sustain the objection.

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2 The jury may have to draw whatever inferences
3 may be appropriate as to whether this is a personal
4 or corporate transaction.

5 Q And sir, what if any records did you examine
6 or transactions, with respect to this property.

7 A Yes.

8 The last document I examined in connection with
9 this property was an assignment of a mortgage dated November 6,
10 1971.

11 What I am saying is, this assignment, per se,
12 was dated as of that date. It was the assignment of the
13 \$8,000 mortgage originally made March 13, 1968.

14 THE COURT: That's the second mortgage?

15 THE WITNESS: Right.

16 A (continuing) It was made in consideration by
17 Drew to Rugore Associates, 21 Irving Place for the consideration
18 of \$10.

19 Q What consideration was paid for that transaction
20 of the mortgage, sir?

21 A \$10.

22 THE COURT: That is the recited consideration?

23 THE WITNESS: Yes sir, on the instrument.

24 THE COURT: Do you know that is a conven-
25 tional expression to say what the real consideration

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is not, customarily used by lawyers?

THE WITNESS: Yes sir.

Q Does that, sir, then conclude all of the records that you could find pertaining to anything that happened with respect to 1418 Bedford Avenue?

A Yes sir.

MR. BRODSKY: Your Honor, I have no further questions.

THE COURT: Cross-examination?

MS. WALKER: Yes, your Honor.

May we approach the sidebar, please?

THE COURT: Yes.

(Sidebar discussion between the Court and counsel as follows:)

MS. WALKER: If the Court pleases, over the defendant's objection the Court permitted this witness to testify as a nonlawyer as to his interpretation of 18 pages of -- as I have heard -- of rather intricate real estate transactions and sum up as to what he says what is ownership.

Now, I honestly cannot properly cross-examine him on this until I go look at these documents.

The issue --

THE COURT: Doesn't your client know what the

Hamill-cross

MR. BRODSKY: We don't contest that.

THE COURT: All right. The two assignments were recorded the same day.

Q Am I correct that one was the first mortgage and one was a second mortgage?

A You're--

Q On the same piece of property?

A There are two mortgages on the same piece of property, yes.

Q Wasn't one a mortgage and one a subordinate mortgage?

A One was for a lesser amount than the other.

Q Do you understand that there is a first mortgage and a second mortgage on the property?

A In this case I understand that there were two mortgages dated March 13, 1968, one was in the amount of \$26,000 and the other one was in the amount of \$8,000. If you want to call the \$8,000 mortgage subordinate mortgage, I will accept that because it's of a lesser amount.

Q If I tell you that that microfilm that you looked at had the word "subordinate mortgage" on it, would you deny it?

A I would have no reason to know or recall.

Q I'm showing you a series of checks and I will

Hamill-cross

call the numbers out for the record, from Government's
Exhibit 21:

Check No. 346, payable to Drew Equity
Funding Corp.

Now, didn't your investigation show that there
was a liability to pay Drew Equity Funding Corp.?

MR. BRODSKY: Objection, your Honor.

He only searched the records pertaining to
transactions in land. He did no investigation as
to those checks. We had many people testify as
to those checks, but certainly not Mr. Hamill.

THE COURT: What's the date of the check?

MS. WALKER: March 3, 1972, your Honor,
and it was canceled out through the bank, according
to the Clearing House Stamp, March 23, 1972.

THE COURT: Did you find anything in your
search of the title records, Mr. Hamill, that would
indicate an obligation on the part of either Mr.
Ruffin or Rugore Associates to pay that check that
Miss Walker is referring to, at that time?

THE WITNESS: Not to my knowledge, your Honor.
If I may just refer to my notes one more
time.

THE COURT: Please do.

Hamill-cross

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2 THE WITNESS: I didn't come across anything
3 which I believe created a liability on the part
4 of Mr. Ruffin to pay Drew Equity.

5 Q Didn't you testify that he got an assignment
6 of the mortgage from Drew Equity on November 17, 1971?

7 A Yes.

8 Q And this check is made out to Drew Equity?

9 A Right.

10 Q And you say that that doesn't evidence that
11 there is an obligation to pay, because you said \$10, and
12 I'm showing you a check for \$3200 -- \$2,000.

13 MR. BRODSKY: I must object to this line of
14 questioning. It is obvious that this witness knows
15 nothing about Mr. Ruffin's bank account, and there is
16 in evidence Defendant's Exhibit L, which lists
17 these checks, and that exhibit speaks for itself,
18 your Honor. There has been no testimony about anything
19 pertaining to those checks except what is in the
20 defendant's exhibits, and I object to this line of
21 questioning.

22 THE COURT: Your objection to the line of
23 questioning is overruled, but I would like to sustain
24 the objection to the last question and rephrase it
25 this way, Mr. Hamill:

Hamill-cross

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2 Is there anything in the records -- let's put
3 it this way: Drew Equity assigned the second
4 mortgage to Rugore in November of '71.

5 THE WITNESS: Yes.

6 THE COURT: You told us that the \$10 was a
7 symbolic figure and did not probably represent the
8 true percentage.

9 THE WITNESS: I agreed with your Honor.

10 THE COURT: Is there anything in the records
11 before you that would show what the actual considera-
12 tion for that assignment was?

13 THE WITNESS: No, your Honor.

14 THE COURT: Is there anything to show, apart
15 from what it was, when it was actually passed?

16 THE WITNESS: No, sir.

17 THE COURT: So insofar as anything you could
18 see from the records, the check Miss Walker showed
19 you might or might not be payment for that assign-
20 ment?

21 THE WITNESS: I have no knowledge either way.

22 THE COURT: You don't know.

23 THE WITNESS: No, sir.

24 Q So subsequently I take it from what you said
25 that you lack knowledge of whether or not in fact these checks

Hamill-cross

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2 were the actual consideration rather than the \$10 that you
3 testified to on direct.

4 A I have never had any knowledge in connection
5 with this transaction other than an examination of the
6 records over at the County Clerk's office.

7 Q But you don't dispute it is the custom or
8 practice to put \$10-- Withdrawn.

9 Isn't it a fact that it says \$10 and other
10 good and valuable consideration?

11 MR. BRODSKY: Objection, your Honor.

12 THE COURT: We're all agreed that the \$10
13 doesn't mean \$10.

14 MS. WALKER: That's my point.

15 Q Therefore, there is no dispute that that \$10
16 does not represent how much was paid?

17 A I have no knowledge either way.

18 MS. WALKER: O.K.

19 Q Now, did you see on any of the documents that
20 you examined from the microfilm, the requirement of the
21 mortgagee to pay the real estate taxes and the water and
22 sewer?

23 A I didn't look at the specific details of the
24 agreements, other than who the parties involved were.

25 Q So you don't deny if I said when I looked

Hamill-cross

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2 at the firm it had the responsibility to pay the real
3 estate taxes? You wouldn't dispute that?

4 MR. BRODSKY: I would like to know what mort-
5 gage we're talking about, whether it's the one that
6 Rugore owns, which is November 16, 1971-- that may
7 be pertinent.

8 THE COURT: At this point, Mr. Brodsky, I don't
9 think it matters. Obviously, the witness, since
10 he didn't read those provisions, isn't going to
11 deny anything that Miss Walker might suggest.

12 THE WITNESS: I did peruse them, but I didn't
13 notice anything that would refresh my recollection.
14 As Miss Walker says, there were 18 pages of docu-
15 ments.

16 MS. WALKER: No further questions.

17 MR. BRODSKY: Just two quick questions.

18 REDIRECT EXAMINATION

19 BY MR. BRODSKY:

20 Q At the conclusion of this entire period of
21 time, that is as late as you searched the records, which
22 I believe you said was when?

23 A There were records available through the begin-
24 ning of 1976.

25 Q And so as of that time, who remained the owner

* * *

DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL
* * * (pp.178a-186a)

292

178a

1 MS. WALKER: Yes, the defendant has motions.

2 If the Court pleases, on behalf of the
3 defendant William Ruffin, at thispoint, I respectfully
4 move the Court for a judgment of acquittal pursuant to
5 Rule 29 of FRCP.

6 Now, it's going to be broken down, if it please
7 the Court, into five different motions.

8 The first is addressed to Counts 10 and 11 of
9 the indictment, charging willful failure to file
10 corporate returns for 1973 and '74.

11 The defendant contends that there is a require-
12 ment that the failure to be filed to be willful and
13 deliberate and the Government failed to offer any
14 evidence with respect to the failing to file being
15 willful or deliberate.

16 The mere fact that the witness Martin said that the
17 computer at the Internal Revenue Service Center said it
18 sent out two notices to Rugore in care of Ruffin is
19 not sufficient evidence to infer willful and deliberate
20 failure to file a corporate return for the years 1973
21 and '74.

22 THE COURT: That motion is denied.

23 MS. WALKER: With respect to Count No. 9, with
24 respect to the 1972 Rugore's willful and deliberate
25 failure to file corporate returns, the defendant

1 contends that the Government failed to produce any
2 evidence of Ruffin's willful and deliberate failure
3 to file the corporate return and contends that the
4 testimony of the witness Martin that the computer code
5 number 590 means that Ruffin communicated in some
6 manner with IRS and stated that he was not required to
7 file is insufficient evidence for an inference that
8 the defendant Ruffin did that.

9 THE COURT: Motion denied.

10 MS. WALKER: With respect to Counts 2, 3, 4, 5
11 and 6, as to William Ruffin individually, for the tax
12 years 1970, 1971, 1972, 1973, 1974, I respectfully move
13 for a judgment of acquittal on the ground the Govern-
14 ment failed to prove that Ruffin knew he had a
15 constructive dividend that he had to report on his
16 individual return.

17 The testimony of the technical adviser, Mr.
18 Buchbinder, is still ringing in our ears at this
19 point and I believe that I contend that the super
20 hyper technical way that they arrived at a determina-
21 tion that this individual taxpayer should be charged
22 and held criminally for constructive dividend -- I
23 fail to see that being evidence which the jury can
24 arrive at as being a willful and deliberate attempt
25 to evade payment on tax on a constructive dividend.

1 There is no evidence that he knew he had it.

2 Moreover, Mr. Rosenblatt disallowed certain
3 expenses which were evidenced by checks on the grounds
4 they were either personal or did not involve Rugore.
5 There is absolutely no evidence that those disallowed
6 expenses, evidenced by checks, were personal or in
7 fact did not involve Rugore. It is a mere statement
8 made by Mr. Rosenblatt that is completely unsupported
9 by any evidence in the case.

10 I contend that the Government has not proved
11 that it was not a Rugore business account upon which
12 the checks were drawn.

13 The evidence shows, and with that 355 cancelled
14 checks in evidence here, and there has been not
15 identified a single one of them as even alleged by
16 the Government to be for personal expenses -- it's
17 just an opinion by Mr. Rosenblatt and a blanket
18 statement.

19 I contend that it's not enough evidence to
20 support a finding that there has been a conversion of
21 his rental income into personal use upon which Mr.
22 Buchbinder has a basis to trigger the right of the
23 Government to go into the constructive dividend theory.

24 I contend that is insufficient evidence for an
25 inference of diversion to be reached.

(Continued next page)

1 THE COURT: Well, the evidence is sufficient.
2 The weight is for the jury to determine.

3 That motion is denied.

4 MS. WALKER: With respect to Counts 7 and 8 on
5 the willful attempt to evade 1970 and 1971 Rugore
6 income tax, the Government failed to show that Ruffin
7 knew that there was a taxable income from Rugore that
8 he was required to report.

9 The mere fact that he filed an inaccurate
10 return is not evidence and cannot be evidence of an
11 attempt to willfully evade income tax.

12 The evidence that in filing the 1970, 1971
13 return is obvious he didn't know what he was doing and
14 the tax law as to the technical aspects of the
15 deductions and depreciation and all must be deducted
16 from income in order to arrive at taxable income.

17 Obviously, in the evidence present in the
18 record, he didn't know what he was doing and there is
19 no evidence that he willfully, knowingly and deliberately
20 attempted to evade payment of income on taxable income
21 for those years.

22 THE COURT: It may be he didn't know what he was
23 doing, but aren't you kind of on the horns of a
24 dilemma? Either the income should have been through
25 the corporation and the corporation should never have

1 have existed in the first place and kept in his own
2 personal name. Either way it had to be reported.

3 MS. WALKER: Again, we come down to the
4 question of taxable income, if the Court please.

5 THE COURT: The question of the propriety of
6 the deduction and whether any deductions allowed may
7 well be an issue.

8 There is not evidence on the basis of which the
9 jury can make much of a determination at this point
10 other than believe or disbelieve the testimony of
11 Rosenblatt.

12 I assume this is what a good part of the defense
13 is going to be aimed at.

14 MS. WALKER: Not only the testimony of Mr.
15 Rosenblatt, we know of a substantial number of checks
16 showing that the money was spent out for expenses.

17 THE COURT: I haven't looked at the checks.
18 That is for comment and argument to the jury. But
19 that question of the propriety of the deductions is
20 one part of the case and because it does present
21 questions of fact that's why I deny your third motion
22 with respect to Counts 2 through 6.

23 With respect to your motion on 7 and 8, you are
24 getting back to the claim that Mr. Ruffin didn't know
25 what he was doing and there is no showing that he

1 willfully avoided the obligation imposed on him by law
2 to file the corporate tax returns or at least report
3 the income as that of the corporation.

4 In making that argument I think we have to look
5 at the entire case. He entered into a lease in his
6 personal name, transferred the property to the
7 corporation, somewhere along the line he filed a
8 corporate return. He entered into the business world
9 and did some business transactions. I think it's got
10 to be for the jury to determine whether he did know
11 what he was doing, whether this was a deliberate
12 scheme as contended by the Government or whether this
13 is just bumbling around in the business world and there
14 is no willful intent to defraud anything.

15 MS. WALKER: If the Court pleases, this is the
16 basis for the argument. The decision of whether or not
17 it was bumbling around in an area in which he was not
18 familiar or whether or not it was willful evasion.
19 The Government has to prove by independent evidence of
20 evil motive, intent, and there isn't a single piece of
21 evidence with respect to that in the record.

22 Again, that relates to the motion that I made
23 and addressed to 2, 3, 4, 5 and 6.

24 THE COURT: The rule is not evil motive and
25 intent. In United States against Pomponio, 97 Supreme

1 Court 22, decided October 12, 1976 --

2 MS. WALKER: Supreme Court 22?

3 THE COURT: 97 Supreme Court 22. It specifi-
4 cally addresses itself to what the charge to the jury
5 should be on the willful acts of tax fraud.

6 The Court says: "It is a voluntary intentional
7 violation of a known legal duty, nothing more."

8 MS. WALKER: Your Honor, I confess standing on
9 my feet right now that I don't remember reading the
10 case but I certainly will read it by the time we get
11 to the end of the case.

12 I believe that what we are talking about here
13 and we are talking about the voluntary willful act,
14 we are not talking about whether or not he did or did
15 not, but there has to be a willful motive, a criminal
16 motive, an evil motive.

17 THE COURT: The Court says it simply has to be
18 voluntarily and intentional and a violation of a non-
19 legal duty.

20 MS. WALKER: That is exactly my point, your
21 Honor.

22 THE COURT: Evil has --

23 MS. WALKER: If a person doesn't know about
24 constructive dividend or if you have a corporation,
25 the bottom line is knowing your bank account is zero

1 at the end, everything you took in went out, you have
2 to know the legal requirements in order to be held
3 criminally liable for violating that.

4 THE COURT: From a logical point of view, you
5 may be correct. The Supreme Court has opened the door
6 to a claim that nobody but accountants could be guilty
7 of tax fraud.

8 Believe me, the Supreme Court will never come to
9 that conclusion and it can mean no more when you enter
10 into the business world you are charged with certain
11 responsibilities that you're going to have to inquire
12 and get people in order to advise you.

13 How far that goes and how far you can rely upon
14 an individual, I don't know. The philosophy discussion
15 of tax fraud is not appropriate at this time.

16 Your Motion as to 7 and 8 is denied.

17 MS. WALKER: My final motion is addressed to
18 Count 1. That is 1969. There is no proof adduced by
19 the Government that Mr. Ruffin knew that he had to
20 report the amount of income in that year that came into
21 his name for the property -- that is the Rugore property.
22 And I contend again that there was no proof that he
23 willfully and deliberately sought to evade payment of
24 income tax on that.

25 The Government has not shown really as to that

1 money the amount of the taxable income. And therefore,
2 no basis for the jury to determine that a willful
3 attempt to avoid tax on a substantial amount of
4 taxable income.

5 THE COURT: On that motion it is denied.

6 Are you read to proceed?

7 MS. WALKER: I am, your Honor.

8 THE COURT: All right.

9 MS. WALKER: Now, the first is the stipulation
10 with respect to Mr. Goldman.

11 THE COURT: Has that been worked out?

12 MR. BRODSKY: Not between counsel, your Honor.
13 I must say I read Miss Walker's request to charge and
14 nowhere in there do I see the suggestion, nor is it
15 the law as far as I understand, that this is a defense
16 to any kind of a criminal case especially a tax case
17 that a defendant long after the years in question may
18 have testified under the compulsion of a subpoena or
19 produced documents under the compulsion of a subpoena.
20 And I submit, your Honor, that number one, Mr. Goldman
21 is not material and relevant to the defendant's intent
22 during the crimes charged in the indictment which was
23 the Government's proof, and secondly, that in effect it
24 would be a self serving statement of prior consistent
25 statements on the part of the defendant.

(Jury leaves the courtroom.)

THE COURT: Both sides formally rest; is that correct?

MS. WALKER: Yes, your Honor.

MR. BRODSKY: Yes, your Honor.

THE COURT: You renew your motions?

MS. WALKER: Yes, your Honor.

THE COURT: On the basis of the entire record.

MS. WALKER: Based on the entire record, the same motions that I made at the end of the People's case.

THE COURT: The motions are denied.

Next comes summation. Before we do that, we'd better discuss charges and requests to charge.

I have more or less standard charges that I make covering most aspects of criminal trials, reasonable doubt, credibility, and lots of other things. I'll review any aspects of those that you want me to do, but the Government's last two requests that went to those points, I am not granting theirs; I'm using my own.

Let's get down, first, to the more meaty aspects of the case--

MS. WALKER: Your Honor, I wasn't quite

1 clear. Did you say that you would review them?

2 THE COURT: I indicated that I have my own
3 standard charges that I used. I'll go through them
4 all if you want me to. I'll tell you, read to you,
5 any items that you are specifically concerned
6 with or you may wish to focus upon particular charges
7 in this case.

8 MS. WALKER: There are three that just off
9 the top of my head in terms of the Court's standard
10 form--

11 THE COURT: What are they?

12 MS. WALKER: One would be the failure of the
13 defendant to take the stand.

14 THE COURT: Do you want me to comment on it?

15 MS. WALKER: I believe that charge I'm
16 requesting to the charge that there is no requirement
17 to the defendant in a criminal case to take the
18 stand.

19 THE COURT: So defense counsel say that they
20 don't want me to make it at all, so not to bring
21 attention to it; if you want me, I'll charge as you
22 requested. There is no obligation to do so.

23 Do you want me to do that?

24 MS. WALKER: It cannot be inferred one way
25 or the other. In a criminal case no inference can

1 be drawn due to the fact that a defendant does not
2 take the stand.

3 THE COURT: Correct. I'll charge that.

4 What's the second?

5 MS. WALKER: Circumstantial evidence.

6 THE COURT: I have a lot on that. What do
7 you want?

8 MS. WALKER: May we have an example of the
9 Court's--

10 MR. BAILEY: The example that you use to
11 describe circumstantial evidence.

12 THE COURT: The example, I think the one I
13 have in here is one who with his own eyes sees a
14 man fire a gun at another man and tells what he
15 saw gives direct evidence of the shooting, then I
16 say you can have circumstantial evidence if the
17 witness has not actually been there to see, but
18 after hearing the shot, arrived several moments later,
19 saw the man holding a gun, and another man on the
20 ground, his testimony would be circumstantial evi-
21 dence of the shooting.

22 MS. WALKER: That's all right.

23 THE COURT: Yes.

24 MS. WALKER: Reasonable doubt.

25 THE COURT: That covers about four pages.

1 A doubt founded in reason, reasoning out of
2 the evidence or lack of it; a doubt which a reason-
3 able person has after carefully weighing all of
4 the evidence; a doubt which appeals to your reason,
5 judgment, common sense, experience; that caprice,
6 whim, speculation, conjecture, or sympathy are
7 not excuses to do an unpleasant duty.

8 If, after considering all the evidence and
9 so forth, you can say you are not satisfied of
10 the guilt of the defendant, that you do not have
11 a binding conviction of his guilt, and if you have
12 such a doubt that would cause you to hesitate
13 before acting in important matters of yourselves',
14 you have a reasonable doubt and you have to acquit.

15 On the other hand, if after that considera-
16 tion you do have a binding conviction of the defend-
17 ant's guilt, such a conviction that you would be
18 willing to act upon in important and weighty
19 matters in the personal affairs of your own life,
20 then you have no reasonable doubt under those
21 circumstances; your duty is to convict.

22 It is beyond a reasonable doubt, not all
23 possible doubt.

24 Reasonable doubt applies not to every bit
25 of evidence but to the essential elements of the

1 crime.

2 Reasonable doubt can arise from the failure
3 to produce evidence, by the Government. The
4 defendant has no obligation to present any evidence,
5 but has the power to subpoena anyone if he wishes.
6 That's reasonable doubt paraphrased.

7 Any others in the general category?

8 MS. WALKER: I think you have covered it,
9 your Honor.

10 THE COURT: Before we get into the more speci-
11 fic aspects of this, Miss Walker, do you have any
12 idea as to how long your summation will take?

13 MS. WALKER: Ninety minutes.

14 THE COURT: Ninety minutes.

15 MS. WALKER: I believe it would take that much
16 time based on the documents and trying to explain to
17 a lay jury the whole extent of proof of --
18 particularly the constructive dividend liability,
19 I based it on that.

20 THE COURT: I'm just thinking of the schedule.

21 MR. BRODSKY: Perhaps I could suggest, it's
22 4:15. I believe I could keep my summation to
23 approximately half an hour, but I could suggest we
24 could split the summations.

25 Let Miss Walker go over until tomorrow due

* * *

1 all of it. I'm breaking up the discussion of elements
2 into separate points.

3 With respect to No. 2, I am granting that.
4 It will appear somewhere in the course of the charge.

5 Request No. 3 I am granting.

6 4 and 5 I'm denying in the form they are
7 requested but they are covered in substance.

8 The Government's supplemental request I am
9 granting--

10 MS. WALKER: Government's 4 is denied?

11 THE COURT: In that form, yes. I told you
12 what the reasonable-doubt charge would be in
13 substance.

14 A supplemental request I am granting that in
15 substance.

16 With respect to the defendant's requests:

17 No. 1 is included in my charge in modified
18 form, but the substance of it is.

19 No, 2 is denied in this form. I am not
20 focusing upon the aspect of an attempt. I am cover-
21 ing the elements that are described, though.

22 No. 3, is denied in this form although I am
23 covering the business about intent in substance.
24 I will cover Request No. 3, but I'm not doing it in
25 this form.

1 Request No. 4 as to willfulness, four
2 different versions are advanced there. I am denying
3 this request as proposed, but am taking the more
4 usual version of willfulness as modified by the
5 Supreme Court in Popiano, that we discussed earlier.
6 connoting a voluntary and intentional violation of
7 a known legal duty.

8 No. 5 will be charged in substance as
9 requested.

10 No. 6, this applies, I assume, to the failure-
11 to-file counts, the last three in the indictment;
12 is that correct?

13 MS. WALKER: I think it goes to all of them,
14 if the Court pleases.

15 THE COURT: The last paragraph says in
16 substance, if the defendant honestly thought he
17 didn't -- a tax, you can consider that in determining
18 whether or not he willfully failed to file a return,
19 which is the last three counts.

20 MR. BAILEY: I realize that. In writing the--
21 not to take up that many pages -- I think the first
22 part does apply to all counts as to ignorance.

23 MR. BRODSKY: The failure to file in this
24 case as a corporate return, and there is a require-
25 ment as testified to by Mr. Bookbinder and Mr. Martin,

1 that the corporation has to file a return whether
2 or not it has any tax due and owing. That is dif-
3 ferent from a personal tax return, whereupon if
4 an individual earns a certain amount of money, he
5 need not file--

6 THE COURT: The question for the jury to
7 determine on the failure to file, is whether the
8 corporation was engaged in business in the years
9 in question.

10 MR. BRODSKY: That's correct.

11 THE COURT: Do you want me to modify the
12 last paragraph, in that respect?

13 MR. BAILEY: Yes, your Honor, please.

14 THE COURT: No. 7, I don't believe -- I'm
15 not going to charge that there is any presumption
16 in this connection. I will charge that the jury may
17 weigh cooperation as one of the elements in determin-
18 ing whether or not there was intent to evade or defeat
19 taxes.

20 No. 8. I am covering that in substance, not
21 in precise form.

22 No. 9, I am denying that as requested, but
23 covering much of it. I'm not going to charge that
24 thousands of taxpayers file inaccurate returns.
25 I'm charging with respect to what makes filing of a

1 return unlawful, and I am not charging as to the
2 absence of a presumption, I'm charging as to how
3 willfulness and knowledge may be established.

4 In substance, I am granting No. 10, with
5 respect to the first eight counts.

6 As to No. 11, with respect to the first
7 six counts, I am charging that. It gets into the
8 business of constructive dividends.

9 No. 12, that's included in my comments about
10 what they can weigh in determining intent.

11 No. 13, there are several requests about
12 constructive dividends and I don't think I will be
13 able to frame them in final form until I hear the
14 arguments of counsel.

15 My view of what the charge will contain is
16 certainly going to cover what a dividend of a cor-
17 poration is and that a distribution or a withholding
18 of money from the corporation may be considered a
19 dividend even though it didn't pass through the
20 corporate account or formal action by the directors.

21 I'll try to focus that upon the transaction
22 that we're dealing with here, in terms that witnesses
23 for both sides have discussed it, the Government
24 witnesses saying that the constructive dividends are
25 of a certain amount, and the defendant's witnesses

1 saying it's of a lesser amount. There is a dispute,
2 apparently, over loans.

3 I think the jury has to be charged as to
4 whether they find they are loans or whether they
5 are not, and--

6 MR. BRODSKY: Excuse me. In that respect
7 I would ask the Court to charge that whether they're
8 loans are not matters with respect to whether they
9 are corporate loans or not.

10 In other words, there has been a lot of loose
11 terms as to loans. It depends what it is, if it was
12 a corporate loan from Rugore to XYZ, if it's a
13 William Ruffin loan, he has in effect taken the
14 money out of the corporation, put it into his own
15 name and loaned it somewhere else, I'd ask the
16 Court to make that distinction.

17 THE COURT: That's really the only signifi-
18 cance of the loans at all, if they were corporate
19 loans that money -- as testified to by the witnesses
20 this morning, the corporation had tax obligations.
21 The only question I see left in the case as to that
22 is whether those amounts are substantial in the
23 jury's mind. What the corporation did with the
24 money is unimportant unless it went to or for the
25 benefit of the defendant.

1 If they were, as you point out, loans of'
2 the defendant, rather than of the corporation,
3 then they should be added into the constructive
4 dividend computation, which the Government has done,
5 which the defendant's accountant has not.

6 The loans are the largest category of items
7 of classification that the parties differ on.

8 Since no one has analyzed it in terms of
9 testimony, I assume it will be done in terms of
10 summation.

11 I am not charging it in that form, but I will
12 cover the problem of intent, at the time the
13 transactions occurred.

14 Of course I cover circumstantial evidence.

15 As to what is dividend, request No. 16, that
16 will be included in substance.

17 No. 17, it's a question as to what is a loan
18 or not. I'm not sure how much of that request I can
19 include, but I will include the concept of expectation
20 of repayment, whether it is a bona fide indebtedness.

21 I'm not sure that's a decisive criteria
22 but it's certainly one of them.

23 Again on constructive dividends, No. 18,
24 in substance that will be included.

25 The recap of constructive dividends is

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2 requested in No. 19. I don't differ as to most of
3 it. I have some quarrel with No. 4. Essentially,
4 what I would be doing is recapping all of your
5 requests, only it will be a little more lengthy.

6 As to No. 20--

7 (Continued on the next page.)

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2 THE COURT: (Continuing) Now the elements I
3 will cover, but in a slightly different form.

4 Now as to the last paragraph, that is concern-
5 ing whether the defendant knows what a constructive
6 dividend was, I will not charge as requested there,
7 that is if he didn't know it they must find the
8 defendant not guilty, I don't think it is necessary
9 for him to know or understand what a constructive
10 dividend is in order to be guilty of fraud under the
11 circumstances as they had been brought out at the
12 trial here, that will be for the Jury to determine
13 under the definitions of the various elements of the
14 case.

15 Now, number twenty-one, failure to file, I
16 am in substance charging that but I am adding the
17 Pompiarno view as to what is willful.

18 Number twenty-two, the defendant has requested
19 they charge as to a lesser included offense.

20 Now what is the Government's position on that?

21 MR. BRODSKY: Our position is in United States
22 v. Bishop that the Supreme Court simply said that that
23 is no longer the law, and in effect Bishop overturned
24 Stone. That is simply no longer the law. That was
25 a 1706(2)(1) prosecution of a false return and the

2 defendant asked for the lesser included instruction
3 and the Supreme Court stated that by considering the
4 intent requirement of willfulness being the same in
5 both statutes therefore it does not necessitate the
6 lesser included offense.

7 We vigorously oppose that.

8 MR. BAILEY: Your Honor, I would agree with
9 Mr. Brodsky but he is missing my point:

10 The defendant has offered in evidence that if
11 the Jury chooses to believe it then for two years
12 Mr. Ruffin did not receive any additional income on
13 the corporate constructive dividend, that is for
14 1971 and '73.

15 Now, on those charges the Jury could find that
16 he did it willfully but without there being a tax
17 due, and if there is no tax due, then it would come
18 out of the 7201 and go into the 7203.

19 THE COURT: But I am going to charge that if
20 they come to that conclusion, that the figure was
21 zero, they would have to acquit ---

22 MR. BAILEY: All right ---

23 THE COURT: If you want to raise that point
24 that they could find him guilty of a false return

25 MR. BAILEY: No, your Honor.

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2 THE COURT: Then you are withdrawing your
3 request for number twenty-two?

4 MR. BAILEY: Yes, your Honor.

5 THE COURT: All right.

6 Twenty-three, I am including instruction to
7 the Jury about inferences, that it is their province
8 to draw the inferences.

9 I am not going to do it quite in this form
10 but it is close.

11 I will deny your request on twenty-four in the
12 form it is offered, I'm using my own charge on
13 character evidence.

14 Now it does say in substance that if you
15 believe the evidence it is sufficient to generate
16 a reasonable doubt, which is the essence of what you
17 are asking for I believe here.

18 MRS. WALKER: Yes.

19 THE COURT: So much for what I am going to
20 say, I think it pretty much covers, it is certainly
21 sufficient for you to do your summation, Mr. Brodsky.

22 MR. BRODSKY: Yes, your Honor, except that
23 I would ask for one more specific request, and I
24 apologize to the Court for not putting it in writing,
25 but I would ask the Court Sir to somewhere in its

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[pp. 202a-246a)

Charge of the Court

MR. BRODSKY: Thank you, your Honor.

THE COURT: Will you bring in the jury, please.

(jury enters the courtroom)

THE COURT: Members of the jury, we are now at the stage of the trial where you are about to undertake your final functions as jurors. Your duty is a serious and important one. In performing it you actively share with me the responsibility of ministering justice according to law and the evidence in the case.

Your oath as jurors obliges you to discharge this final task in an attitude of complete fairness and impartiality and as was emphasized by me when you were selected as jurors, without bias or prejudice, for or against the Government or the defendant as parties to this controversy.

You must not permit yourselves to be governed by sympathy or any other consideration which is not founded in the evidence and in these instructions on the law.

The case is important to the Government since the enforcement of the criminal laws is of prime importance to the welfare of the community.

Obviously, it is equally important to the defendant who is charged with serious crimes and has

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the right to receive a fundamentally fair trial.

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The community has an interest in that too.

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The fact that the Government is a party entitles it to no greater consideration than that accorded to any other party to a litigation.

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By the same token, it is entitled to no less consideration. All parties, the Government and individuals alike, stand as equals before the Bar of justice.

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In this charge, I shall describe for you, first, the general principles applicable to all criminal trials, then the nature of the charges in this case, next the specific rules of law which are applicable to those charges together with some suggestions on how you might approach the analysis here, and finally something about how you should reach a verdict.

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First, as to the general rules applicable to all criminal trials. Your final role is to decide and pass upon the fact issues in the case. You are the sole and exclusive judges of the facts. You determine the weight of the evidence. You appraise the credibility of the witnesses. You draw the reasonable inferences from the evidence.

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My function now is to instruct you as to the

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2 law and it is your duty to accept these instructions
3 as to the law and to apply them to the facts as you
4 may find them. With respect to any fact matter, it
5 is your recollection, and yours alone that governs.

6 Anything that counsel, either for the Government
7 or for the defense may have said with respect to
8 matters in evidence, whether during the trial, in a
9 question, in argument or summation is not to be sub-
10 stituted for your own recollection of the evidence.

11 So, too, as to any matter in evidence, anything
12 that I may have said during the trial or may refer
13 to during the course of these instructions is not to
14 be taken in the place of your own recollections.

15 Keep in mind that I have no view whatsoever as
16 to the guilt or innocence of this defendant.

17 The indictment in the case is merely an accusa-
18 tion, a charge. It is not evidence of the defendant's
19 guilt. Since the defendant has pleaded "not guilty"
20 the Government then has the burden of proving the
21 charges against the defendant beyond a reasonable
22 doubt.

23 A defendant does not have to prove his innocence.
24 On the contrary, the defendant is presumed to be
25 innocent of the accusations contained in the

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2 indictment. This presumption of innocence was in his
3 favor at the start of the trial; it continued in his
4 favor throughout the entire trial. It is in his
5 favor even as I instruct you now and it remains in
6 his favor during the course of your deliberations in
7 the jury room.

8 The presumption of innocence is removed only if
9 and when you are satisfied that the Government has
10 sustained its burden of proving the defendant guilty
11 beyond a reasonable doubt.

12 If the Government has failed to sustain its
13 burden, then the presumption of innocence alone is
14 sufficient to acquit him.

15 I have used the term reasonable doubt. What is
16 a reasonable doubt? The words almost define themselves,
17 that there is a doubt founded in reason and arising
18 out of the evidence or lack of evidence.

19 It is a doubt which a reasonable person has
20 after weighing all the evidence. A reasonable doubt
21 is a doubt which appeals to your reason, to your
22 judgment, to your common sense and your experience.
23 It is not caprice, whim, speculation, conjecture or
24 suspicion. It is not an excuse to avoid the perfor-
25 mance of an unpleasant duty. It is not sympathy for

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2 a defendant.

3 If, after a fair and impartial consideration
4 of all the evidence you can candidly and honestly say
5 you are not satisfied of the guilt of the defendant,
6 that you do not have an abiding conviction of his guilt,
7 in sum, if you have such a doubt as would cause you
8 as prudent persons to hesitate before acting in matters
9 of importance to yourselves, then you have a reasonable
10 doubt and in that circumstance, it is your duty to
11 acquit.

12 On the other hand, if after such an impartial
13 and fair consideration of all the evidence you can
14 candidly and honestly say you do have an abiding con-
15 viction of the defendant's guilt, such a conviction
16 as you would be willing to act upon in important and
17 weighty matters in the personal affairs of your own
18 life, then you have no reasonable doubt and under
19 such circumstance it is your duty to convict.

20 One final word on this subject. Reasonable
21 doubt does not mean a positive certainty or beyond all
22 possible doubt. If that were the rule few persons,
23 however guilty they might be, would be convicted.
24 Since it is practically impossible for a person to be
25 absolutely and completely convinced of any controverted

fact, the law in a criminal case is that it is sufficient if the guilt of a defendant is established beyond a reasonable doubt, not beyond all possible doubt.

Nor is it the Government's burden to prove each and every bit of evidence to be true beyond a reasonable doubt. Its burden is to prove beyond a reasonable doubt each and every essential element of the crime charged. I will have more to say about the elements of these crimes in a few moments.

Reasonable doubt may arise from the failure of the Government to produce evidence. The defendant is not obligated to present evidence in his favor. He had the right to rely on the failure of the Government to prove its case.

He may also rely on evidence brought out on cross-examination of witnesses called by the Government.

On the other hand, the defendant has the power to subpoena anyone in support of his position if he so chooses and he may exercise that power if he chooses.

I have used the term "inference". An inference is a conclusion which reason and common sense lead

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2 you to draw from the facts which have been established
3 by the evidence in the case. You are not required to
4 draw inferences. It is within the exclusive province
5 of you, the jury, as the ultimate triers of the fact
6 in the case to determine whether the facts shown by
7 the evidence warrant whether or not any particular
8 inference should be drawn.

9 Evidence may be either direct or circumstantial.
10 Direct evidence is that which is given of actual or
11 personal knowledge of the fact in question. One who
12 with his own eyes sees a man fire a gun at another man
13 and tells what he saw has given direct evidence of the
14 shooting.

15 In the absence of direct evidence, however,
16 reliance is often placed upon circumstantial evidence
17 which does not tend to establish the fact in question
18 directly, but rather does so indirectly by establishing
19 surrounding circumstances from which the fact in
20 question can be inferred.

21 Thus, if our witness to the shooting had not
22 actually been there to see it, but after hearing
23 a shot arrived moments later and saw one man holding
24 a smoking gun and the other lying on the ground, his
25 testimony would tend to prove the shooting, but it

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would be indirect or circumstantial evidence since it would be evidence of surrounding or collateral facts from which the fact in question, the shooting, might be inferred.

What is the evidence in this case which you may consider? It consists of the sworn testimony of witnesses regardless of who called them, of the exhibits which have been received in evidence regardless of who produced them and any facts which may have been admitted or stipulated to by counsel.

What is not evidence? Statements or arguments of counsel on opening, summation or made during the trial are not evidence. Any statements made by me are not evidence. Anything that I have directed to be stricken from the record or for you to disregard, that is not evidence. Any questions to which an objection has been sustained; the question is not evidence. You are not to speculate on what the answer might have been had I permitted the answer to be given.

Let us turn to the specific charges in the case as they are set forth in the indictment. Keep in mind that the indictment is only a charge. It is not evidence in the case.

It may be convenient for you to think of the

counts in the indictment, that is the charges against the defendant in two groups, tax evasion and failure to file tax returns.

First I will discuss the evasion charges. Later we will take up the failure to file counts.

The defendant, William Ruffin, is charged in the indictment with eight counts of tax evasion in violation of Section 7201 of the Internal Revenue Code and three counts of willful failure to file tax returns in violation of Section 7203.

There is a distinction between civil liability for the payment of taxes and criminal liability under various sections of the tax law.

This is a criminal case. The defendant here is charged with the commission of a crime, several crimes and the fact that he may or may not have settled his civil liability for the payment of taxes claimed to be due from him to the United States is not to be considered by you in determining the issues in this case, except as such evidence might throw some light on the question of intent.

The tax evasion counts fall into two groups; personal tax returns and corporate tax returns. In the first six counts of the indictment, the defendant

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is charge with attempting to evade and defeat his personal income tax liability for the years 1969 through 1974.

In Count 7 and 8, the defendant is charged as the responsible corporate officer with attempting to evade and defeat the corporate tax liability of his corporation, Rugore Associates, Inc, for the years 1970 and 1971.

These counts are based on the Government's claim that the defendant filed false and fraudulent corporate tax returns on behalf of Rugore for those two years.

For the first six counts, that is, one through six inclusive, charging the defendant with tax evasion on his personal income tax return, the indictment charges that the defendant, William Ruffin, willfully and knowingly attempted to evade and defeat a large part of the income tax due and owing by him to the United States of America for each of the calendar years ending December 31, 1969, 1970, 1971, 1972, 1973, 1974, by filing or causing to be filed false and fraudulent income tax returns wherein he understated his taxable income for each year when he well knew that his taxable income was more than he stated

14 1 on his return.

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3 Subsequently, that he reported less income
4 tax than was due and owing in each year to the United
5 States of America, all in violation of Section 7201
6 of the Internal Revenue Code.

7 Each year is covered in a separate count of
8 the indictment. For example, Count 1 charges that for
9 1969, the defendant reported taxable income of
10 approximately \$8300 upon which approximately \$1700
11 in tax was due when he knew that his taxable income for
12 1969 was approximately \$26,000, upon which approximately
13 \$8000 in tax was due.

14 Counts 2 through 6 read the same as Count 1,
15 but cover the years 1970 through 1974, specifically
16 and of course, the amounts of taxable income claimed
17 to be due and tax due for each year differs for each
18 count.

19 Count 7 and 8 charge the defendant with tax
20 evasion with respect to the corporate tax returns.
21 The indictment charges that the defendant, William
22 Ruffin, president and sole shareholder of Rugore
23 Associates, Inc, a corporation, willfully and knowingly
24 attempted to evade and defeat a large part of the
25 income tax due and owing by the corporation to the

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United States of America by preparing and causing to be prepared, by signing and causing to be signed and by mailing and causing to be mailed false and fraudulent income tax returns wherein he understated the corporations taxable income for each year when he well knew that the corporation's taxable income was more than what was stated on the return and subsequently, that the corporation reported less income tax than was due and owing in each year charged to the United States of America.

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Each of these years is covered in a separate count of the indictment. Count 7 charges that for 1970 the defendant reported no taxable income for the corporation upon which no tax was due when the defendant knew the corporation's taxable income for 1970 was approximately \$32,000 upon which approximately \$9000 in tax was due.

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Count 8 charges that for 1971 the defendant reported no taxable income for the corporation upon which no tax was due when the defendant knew the corporation's taxable income for 1971 was approximately \$17,000, upon which approximately \$3900 in tax was due.

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All of the counts, one through eight, charge

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2 a violation as I have indicated before of Section
3 7201 of the Internal Revenue Code. That section reads
4 in pertinent part:

5 "Any person who willfully attempts in any manner
6 to evade or defeat any tax imposed by this title or
7 the payment thereof shall be guilty of a crime."

8 So much for the specific tax evasion charges
9 here. Now, let us turn to the applicable rules of law
10 and how you might approach them. Still, I am talking
11 within the tax evasion group. I will take up later,
12 as I told you, the questions of failure to file.

13 First, as to the essential elements of the
14 crime of tax evasion. With respect to each of the
15 evasion counts, that is one through eight of the
16 indictment, three essential elements must be proved
17 in order to establish the offense charged.

18 First, that a substantial amount of unpaid
19 Federal income tax was due and owing from the taxpayer,
20 that is, Mr. Ruffin on the personal returns and the
21 corporation on the corporate returns, due and owing
22 from the taxpayer to the Government over and above
23 the amount declared disclosed and the income tax for
24 that year.

25 Second, that the defendant willfully attempted

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to evade or defeat the tax due and owing with specific intent to defraud the Government.

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Third, that in furtherance of this intent the defendant did an affirmative act.

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The burden is on the Government to prove every element of the offense charged beyond a reasonable doubt and the law never imposes upon a defendant in a criminal case the burden of producing any evidence or calling any witnesses.

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With respect to the first element, that is there is a substantial amount of unpaid tax due over and above what is declared. The Government is not required to prove with mathematical certainty the precise amount of the tax deficiency for any one year nor is it required to prove the actual figures which are alleged in the indictment.

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It is sufficient if the Government proves that the tax deficiency was substantial for the years in question. In other words, what you must do with respect to this element is decide whether the Government has proved beyond a reasonable doubt that a substantial amount of tax was due and owing for the year in question.

How do you determine whether or not there was

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2 a substantial tax due? You are free to approach this
3 question in any way you wish but I suggest the
4 following approach might be helpful to you.

5 The analysis must be made for both the cor-
6 poration's returns and Mr. Ruffin's personal returns.
7 With both, the general approach is first, you determine
8 the gross income and subtract from that the expenses
9 and deductions leaving a net taxable income.

10 That figure is then multiplied by the applicable
11 tax rate to produce the total tax for the taxpayer
12 in that year. If the taxpayer paid a tax the amount
13 paid should be deducted from the total tax which would
14 leave an unpaid amount of tax due and that is the
15 amount which you would then have to determine whether
16 or not it was substantial.

17 In making the analysis I suggest that you con-
18 sider, first, the income deductions and tax for the cor-
19 poration, Rugore Associates, Inc. The only income in
20 question in this case is the rental which was paid for
21 the property of 1402 Bedford Avenue which is amounted,
22 according to the evidence, at approximately \$30,000
23 per year.

24 Both parties have argued although the rental
25 income was actually paid by checks made out to

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2 William Ruffin individually, and deposited in bank
3 accounts which were in his own name rather than in
4 accounts of the corporation, nevertheless, as both
5 parties argue, the rental income properly belonged
6 to and was chargeable as income to the corporation.

7 There is a period of time during 1969
8 prior to when the defendant deeded the property to
9 Rugore Associates, Inc, when the Government contends
10 that the income was chargeable directly to Mr. Ruffin.

11 As to the income applicable to that period of
12 time, if you find it was personal to Mr. Ruffin,
13 rather than corporate, then you may calculate it
14 directly in his personal return.

15 As to the remainder of the income, that is
16 after the property was conveyed to the corporation,
17 for each year there should be deducted from the rental
18 income the expenses of the corporation in order to
19 find the corporate net taxable income.

20 Accountants have testified on both sides. They
21 have analyzed the figures for you, presented their
22 summaries. You will have the exhibits in the jury
23 room to study and if you wish, I will have the two
24 blackboards over there and the numbers of the appli-
25 cable figures written down. I will have them brought

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into the jury room so that you can look at them and they may help you in your deliberations.

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If you find that Rugore had a net taxable income in any year, then taxes, of course, would be due on that income. For the years 1970 and 1971, you must determine under Count 7 and 8 of the indictment whether the amount of those taxes, if you find them to be due, was substantial.

If you find beyond a reasonable doubt that for either year the amount of taxes owing by Rugore was substantial, then you will have satisfied that essential element of the corporate tax evasion charge for that year.

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For each of the years in question, except 1969, that is for 1970 through 1974, if you find that Rugore had a net taxable income, then you would deduct the amount of the tax due to determine the earnings and profits of Rugore for that year.

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With respect to those earnings and profits the Government contends that the defendant diverted them to his own personal use, largely by way of payments in connection with the property known as 1410 Bedford Avenue and also 1418 Bedford Avenue.

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With respect to the payments to or on behalf

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of 1410 Bedford Avenue, defendant contends that they were loans by Rugore Associates, Inc to 1410 Bedford Avenue Corporation in which Mr. Ruffin apparently also had an interest.

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The Government argues they were not loans but were instead diversion of the corporate income to further Mr. Ruffin's personal interests.

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With respect to the payments in connection with 1418 Bedford Avenue, defendant contends that Rugore bought mortgages on the property and the payments that it made were legitimate expenses and investments made by and on behalf of Rugore.

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The Government, on the other hand, contends these payments, too, were for the personal profit of Mr. Ruffin.

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Both accountants analyzed for you what they called the diversions from the corporate earnings. These diversions were also spoken of as constructive dividends.

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The accountants differed in the amounts which they calculated. Their differences consist of largely but not entirely of their differing treatment of the payments which were made in connection with the 1410 and 1418 Bedford Avenue properties.

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2 In connection with Mr. Ruffin's personal
3 returns for the years 1969 through 1974, what you
4 must decide under this first element of the crime of
5 tax evasion is whether or not there was a substantial
6 tax due over and above what he reported.

7 The method of calculation used by both sides
8 to help you on that point was to add to the income
9 which Mr. Ruffin reported, that income which the
10 accountants classified as diversions or constructive
11 dividends and then calculate the additional tax due.

12 As to that point I have to give you one sup-
13 plemental instruction. You may not consider con-
14 structive dividends as part of the income for Mr.
15 Ruffin for the year 1969.

16 I am charging you that as a matter of law.
17 Insofar as the first count of the indictment is concerned
18 pertaining to 1969, if there is to be any additional
19 income-related expenses arising out of the rental
20 payments for 1402 Bedford Avenue, it would have to
21 be because you found that that rental income was
22 Mr. Ruffin's property personally prior to the time
23 that the real estate was transferred to the corporation.

24 In other words, the only issue that you have
25 to determine with respect to the income of Mr. Ruffin

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in 1969 relates to whether or not he personally received money for rents during that period up to the time that it was conveyed to the corporation.

After that time you are dealing with a question of constructive dividends, but as to the year 1969, I am charging you as a matter of law, you may not add constructive dividends into Mr. Ruffin's personal income.

With that one exception, let me repeat the last sentence I gave you before the digression, and I will continue.

The method of calculation used by both sides to help you on that point was to add to the income Mr. Ruffin reported, that income which the accountants classified as diversions or constructive dividends and then calculate the additional tax due.

You have heard the accountants testify on that and you will have their exhibits and summaries available to you. You must determine for each year whether or not there was an additional tax due and if so, whether the amount was substantial.

If you find beyond a reasonable doubt that for any of the six years in question the amount of tax owing by Mr. Ruffin was substantial, then you will

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2 satisfied that essential element of the personal tax
3 evasion charges for that year.

4 In connection with the concepts of constructive
5 dividend's and loans, I should give you some further
6 instructions.

7 A dividend is a distribution made by a cor-
8 poration to shareholders out of accumulated earnings
9 and profits without expectation of payment.

10 A constructive dividend is one which was not
11 formally authorized by the corporation and which may
12 not have even resulted from the actual transfer of
13 money, but may have resulted from the diversion of
14 money into the stockholders' hands, even before it
15 passed through the corporation's hands.

16 If you find Mr. Ruffin received any such
17 amounts of Rugor's money and that those amounts could
18 have been paid out of accumulated earnings and profits
19 for the year in question, then they can be considered
20 as dividends or constructive dividends here which were
21 paid to Mr. Ruffin and which should have been reported
22 by him on his personal income tax return.

23 Should you find that Mr. Ruffin received more
24 of such payments in any one year than was available
25 as the corporation accumulated earnings and profits up

1 through the end of that year, then the excess sum
2 should not be considered as a dividend, but instead
3 would be a return on his investment and would not be
4 chargeable to him as income.
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6 With respect to loans, a loan is an advance
7 of money pursuant to agreement that the money will
8 be repaid at some future date.

9 An agreement to repay must be absolute. If
10 the lender does not believe or cannot reasonably
11 believe the money will be repaid, then the advance
12 does not constitute a bona fide loan.

13 The agreement to be repaid may be in writing,
14 but it is not required to be in writing and it may
15 be expressed or implied based upon the circumstances
16 surrounding the advance or payment of money.

17 The question, therefore, is one of intent:
18 the actual intent of the parties. Did Rugore Associates
19 Inc, and 1410 Bedford Avenue Corporation intend this
20 money should be repaid? The intent we are looking for,
21 of course, is the intent which existed at the time
22 that the transactions occurred and not any subsequently
23 developed intent.

24 If you determine the parties intended and agreed
25 the amounts paid to 1410 Bedford Avenue Corporation

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2 by Rugore Associates, Inc, should create an obligation
3 to repay, then those sums would constitute a bona
4 fide loan and, therefore, would not be part of any
5 constructive dividend or income to Mr. Ruffin personally.

6 There can be no eyewitness account as to the state
7 of mind with which an act is done or omitted. Therefore
8 in determining the intent of a person you can properly
9 look to matters of circumstantial evidence.

10 To recap what I have said on this issue of
11 constructive dividend, in order for you to find a
12 constructive dividend chargeable as taxable income
13 to Mr. Ruffin personally, you must, one, find Mr.
14 Ruffin received an economic benefit from Rugore
15 Associates.

16 Two, you must determine the amount of the
17 economic benefit.

18 Three, you must determine that the corporation
19 had accumulated earnings or profits.

20 Four, you must find that the amount of the
21 economic benefit received by Mr. Ruffin was within
22 the amount that you have determined was the accumulated
23 earnings and profits of the corporation for that year.

24 However, if you find that the amount which
25 Mr. Ruffin received constituted a bona fide loan by

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Rugore to 1410 Bedford Avenue Corporation, then that amount, of course would not be included as a constructive dividend, would not be income taxable to Mr. Ruffin.

So much for the first element of the crime of tax evasion. Fortunately, the rest of the elements are much simpler.

The second element of the offense charged in Counts one through eight of the indictment is that the defendant willfully attempted to evade or defeat the tax due and owing with specific intent to defraud the Government.

An act is done willfully if it is done voluntarily and intentionally and with the specific intent to do something that the law forbids. That is to say, it connotes a voluntary, intentional violation of a known legal duty.

Here, the Government must prove beyond a reasonable doubt a specific wrongful, deliberate intent to evade and defeat the tax due by filing a fraudulent return.

That intent can be defined as an actual knowledge of the existence of an obligation to pay the tax and a wrongful intent to evade it.

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Fraud is never imputed or presumed. You should not find fraud if the circumstances at most merit only suspicion; willfulness, involves a specific intent which cannot be inferred from the mere understatement of income.

Since intent is a state of mind and it is not possible to look into a man's mind to see what went on, the only way you have of arriving at the intent of the defendant in this case is to take into consideration all the facts and circumstances shown by the evidence, including the exhibits, and determine from this what the intent of the defendant was at the times in question.

In this connection, you may weigh along with all the other evidence in the case whether or not the defendant attempted to conceal his activities, whether he cooperated with the Government to facilitate their ascertaining the facts and whether the defendant understood the law applicable to his own and to Rugore's income tax liability.

We are involved here with a filing of tax returns which are alleged to be inaccurate. Such filing is unlawful, however, only if it is made willfully. If made with knowledge of its falseness

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2 and with the intent to evade taxes.

3 Mere negligence, even gross negligence, is not
4 sufficient to constitute willfulness. A defendant
5 is not willfully evading a tax if it is shown that he
6 is merely careless in keeping his books or if he made
7 errors of judgment or if he failed to hire a competent
8 bookkeeper or accountant.

9 As to whether the defendant was aware of the
10 contents of his personal returns and of the tax returns
11 pertaining to income of Rugore Associates, you are
12 instructed that the law is if you are further convinced
13 beyond a reasonable doubt that the defendant, William
14 Ruffin, signed the tax returns in question, then you may
15 draw the inference to find that he had knowledge of the
16 contents of the returns.

17 The third element of the crime of tax evasion
18 here as set forth in Counts one through eight, is
19 that the defendant did an affirmative act in
20 furtherance of his intent to defraud the Government
21 of taxes due and owing to it.

22 Examples of such an affirmative act might
23 include but are not limited to such things as keeping
24 a double set of books, making false entries or altera-
25 tions or false invoices or documents, destruction of

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2 books and records, concealment of affidavits or
3 covering up sources of income, the handling of one's
4 affairs to avoid making the records of the kind usually
5 kept in the transaction requiring income to be paid in
6 cash, having such income deposited in accounts not in
7 the proper name, but in the names of others, misleading
8 records or any conduct, the likely effect of which
9 would be to mislead or conceal.

10 To find the defendant guilty of an offense
11 charged by Counts one through eight, you must find
12 beyond a reasonable doubt that he committed an affir-
13 mative act of which the ones just listed by me are
14 merely examples and you must also find he did it in
15 furtherance of his intent to cheat the Government out
16 of taxes due and owing to it.

17 With respect to the counts of failure to file
18 income tax returns of the corporation, these are
19 Counts 9 through 11 of the indictment. It charges
20 that the defendant William Ruffin, as president and
21 sole shareholder of Rugor Associates, Inc., a corpora-
22 tion required by law to make a corporate income tax
23 return for each of the calendar years ending December
24 31, 1972, 1973 and 1974, respectively, which returns
25 were to be filed on or before March 15 of 1973,

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'74, and '75, respectively and that he failed to make such returns in violation of Section 203 of the Internal Revenue Code.

Each year, of course is covered in a separate Count of the indictment.

Section 7203 of the Code provides in part as follows:

"Any person required by law or regulation to make a return, who willfully fails to make such return at the time required by law or regulation shall be guilty of a crime."

Failure to comply with the requirements of 7203 for any one year is a separate offense from such failure to comply for a different year.

A defendant's tax obligations for any one year must be determined separately from his tax obligations from any other year.

As to the elements that pertain to this failure to file. With respect to each year there are four essential elements which must be proved in order to establish the offense charged.

First, that Rugore Associates, Inc, was required to file a tax return for the year in question.

Second, that it was the defendant, William Ruffin,

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who was required by law to file such returns for
Rugor.

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Third, that he failed to file the returns
at the time required by law.

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Fourth, his failure to file was willful.

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As to the first element, I instruct you that
if a corporation is conducting business in any year
it is required by law to file a return for that year
with the Internal Revenue Service.

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As to the second element, that it was William
Ruffin who is required by law to file the returns
for Rugore Associates, Inc, a corporation tax return
must be signed and sworn to by the president, vice-
president or other principal official of a corporation.

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There is evidence before you from which you may
but are not required to conclude that Mr. Ruffin was
the sole stockholder and president and managing agent
of Rugore.

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The third element that the corporation failed
to file a return for the respective years in question
speaks for itself.

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As to the fourth element , willfullness, the
term willfully used in connection with this offense
means, voluntarily, purposely, deliberately and

1 intentionally as opposed to incidentally, inadvertent-
2 ly or negligently.
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4 An act such as this is willful if it is a
5 voluntarily, intentional violation of a known legal
6 duty. Mere negligence, even gross negligence, is not
7 sufficient to constitute willfulness under the
8 criminal law.

9 For Mr. Ruffin's failure to file, to be willful,
10 under this provision of the law, there is no necessity
11 that the Government prove that the defendant had an
12 intention to defraud the Government or evade the
13 payment of any taxes.

14 On the other hand, the defendant's conduct is
15 not willful if you find that he failed to file a
16 return because of negligence, inadvertence, accident
17 or reckless disregard for the requirements of law or
18 due to a good faith understanding of the requirements
19 of the law.

20 The question of intent is a matter for you as
21 jurors to determine. Intent is a state of mind.
22 As I indicated before, you cannot of course look at
23 a man's mind to see what happened. The only way you
24 have at arriving at the intent of a defendant in this
25 case is for you to take into consideration all of the

Charge

1 facts and circumstances shown by the evidence, in-
2 cluding the exhibits and determine from all such facts
3 and circumstances whether it was the intent at the
4 time in question not to file tax returns.
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6 Thus, direct proof of wrongful or willful
7 intent or knowledge is not necessarily intent and
8 knowledge that may be inferred from acts, including
9 the manner in which the defendant conducted his affairs
10 and such inferences as may arise from a combination of
11 acts even though any single act standing by itself
12 might seem unimportant.

13 These are questions of fact to be determined
14 by all of you from the circumstances in this case.
15 The fact that the defendant did file income tax returns
16 for the corporation for the years 1970 and 1971 may be
17 considered by you as evidence of the fact that he
18 was aware of the filing requirements.

19 With respect to any one count of the indictment
20 the Government must prove every element of the crime
21 charged beyond a reasonable doubt. If the Government
22 fails as to any element you must acquit on that count.

23 The fact that one element of the crime may or
24 may not exist has no bearing upon any other element
25 of the crime. You may not infer solely from the

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2 existence of one element if you conclude that that
3 element has been established. You may not infer from
4 that with any other element as having been established.

5 If any element of the crime has not been
6 established beyond a reasonable doubt your verdict on
7 that count must be not guilty.

8 On the other hand, you must convict the defendant
9 if each of the elements of any crime has been proved
10 beyond a reasonable doubt.

11 A difficult aspect of any jury's duty is to
12 determine the credibility of the witnesses and to
13 weigh their testimony. You as the jurors are the sole
14 judges of the credibility of the witnesses.

15 Credibility refers to the believability
16 of their testimony and the weight their testimony
17 deserves. Your determination of the issue of credi-
18 bility very largely must depend upon the impression a
19 witness made upon you as to whether or not he was
20 telling the truth or giving you an accurate version
21 of what occurred.

22 When you walk in the door of the courtroom and
23 sit in the jury box while a trial is going on, while
24 you are deliberating in the jury room, you have your
25 common sense, your good judgment, your experience with

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2 you. You decide whether or not a witness is straight-
3 forward and truthful, whether the witness attempted
4 to conceal anything, whether the witness had a motive
5 to testify falsely, whether there is any reason why
6 the witness might have colored his testimony.

7 In other words, what you try to do, to use the
8 vernacular, is to size a person up just as you would
9 do in any matter of importance that you were undertaking
10 to determine whether a person is truthful, candid and
11 straightforward.

12 Scrutinize the testimony given and the circum-
13 stances under which each witness testified and every
14 matter in evidence which tends to show whether a
15 witness is worthy of belief.

16 Consider each witness' intelligence, his motive,
17 state of mind, demeanor and manner while on the
18 witness stand. Consider the witness' own ability
19 to observe the matters as to which he testified, whether
20 he impressed you as having an accurate recollection of
21 those matters.

22 Consider the relations that each witness might
23 bear to either side of the case, the manner in which
24 each witness might be affected by the verdict and the
25 extent to which, if at all, that each witness is

1 supported or contradicted by other evidence in the
2 case.
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4 If you find that any witness, and this applies
5 alike to Government and defense, willfully testified
6 falsely as to any material fact you have a right to
7 reject the testimony of that witness in its entirety
8 or you may accept that part or portion which you
9 believe to be credible.

10 The fact that some Government witnesses were
11 Government employees does not entitle their testimony
12 to any greater weight or consideration than that
13 afforded to any other witness in the case. You will
14 evaluate their credibility the same way you do that
15 of any other witness.

16 The law does not compel a defendant in a
17 criminal case to take the stand and testify. No
18 presumption of guilt may be raised and no inference
19 or any kind may be drawn from the failure of the
20 defendant to testify here. As stated before, the
21 law never imposes upon a defendant in a criminal
22 case the burden or duty of calling any witnesses or
23 producing any evidence.

24 (cont'd on next page)
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The weight of the evidence is not necessarily determined by the number of witnesses testifying on either side. You should consider all the facts and circumstances in evidence to determine which of the witnesses are worthy of greater credence. You may find the testimony of a smaller number of witnesses on one side is more credible than the testimony of a greater number of witnesses on the other side.

The defendant has introduced evidence of his good reputation in his community prior to the indictment in this case. Such evidence may indicate to you, the jury, that it is improbable that a person of such character would be predisposed to commit the crime charged. Therefore, the jury should consider this evidence along with all the other evidence in the case in determining the guilt or innocence of the defendant. The circumstances may be such that evidence of good character alone may create a reasonable doubt of the defendant's guilt, although without it the other evidence would be convincing.

However, evidence of good reputation should not constitute an excuse to acquit the defendant, if the jury, after weighing all the evidence, including

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2 the evidence of good character, is convinced beyond
3 a reasonable doubt, that the defendant was predis-
4 posed to commit the crime charged.

5 If any facts permit inferences with guilt or
6 innocence, you may not consider those facts with
7 evidence of guilt. If you are satisfied from the
8 evidence as a whole that the defendant is guilty
9 beyond a reasonable doubt, you should find a verdict
10 of guilty.

11 I have sought not to comment on the evidence
12 in any detail or to give any impression as to my
13 own view, if I have one, of the relative weight of
14 the evidence. If I have inadvertently done so, how-
15 ever, I ask you to disregard it entirely because
16 you are the sole judges of the facts.

17 From time to time, in the course of the trial,
18 objections have been made and rulings on evidence
19 given. Draw no inferences from the comparative frequen-
20 cy of objections from one or the other side or from
21 the comparative record in having their objections
22 sustained. Where an objection to a question has been
23 sustained, of course, you must disregard the question
24 and draw no inferences from its wording about what
25 answer might have been given.

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2 Where an objection is overruled, evidence
3 then received has no special weight just because
4 it was unsuccessfully objected to.

5 Under you oath as jurors, you cannot allow
6 consideration of the sentence which might be imposed
7 upon a defendant, if he is convicted, to enter into
8 your deliberations or to influence your verdict in
9 any way. In the event of a conviction, the duty
10 of imposing sentence rests solely with me.

11 Your duty is to decide the case solely upon
12 the evidence, to weigh the evidence in the case and
13 to determine the guilt or the innocence of the
14 defendant solely based upon that evidence and these
15 instructions. The verdict in each instance must be
16 unanimous.

17 Each of you, as jurors, is entitled to your
18 own opinion but each of you should exchange views
19 with your fellow jurors. That is the very purpose
20 of jury deliberation; to discuss and to consider the
21 evidence, to listen to the arguments of your fellow
22 jurors, to present your individual views, to consult
23 with one another and to reach an agreement based solely
24 and wholly on the evidence, if you can do so without
25 violence to you own individual judgment.

2 Each of you must decide the case for yourselves
3 after consideration with you fellow jurors, but you
4 should not hesitate to change an opinion which, after
5 discussion with your fellow jurors, appears to you
6 to be erroneous. However, if after carefully consider-
7 ing all the evidence and the arguments of your fellow
8 jurors, you entertain a conscientious view that differs
9 from others, you are not to yield your judgment simply
10 because you are outnumbered.

11 Your final vote must reflect your conscientious
12 view as to how the issues should be decided. The charge
13 here is most serious. A just determination of this
14 case is important to the public. It is equally impor-
15 tant to this defendant. Under your oath as jurors,
16 you must decide this case without fear or favor and
17 solely in accordance with the evidence and the law.
18 If the Government has failed to carry its burden
19 as to the defendant, your sworn duty is to acquit.
20 If it has carried its burden as to the defendant you
21 must not flinch from your sworn duty. You must con-
22 vict.

23 If you wish to look at -- as to the exhibits,
24 I am going to send all the exhibits in to you. YOU
25 can use them to whatever extent you find them helpful

1
2 in your deliberations. As I indicated, if you wish
3 to have the blackboards brought in for reference
4 purposes, I will have those brought in.

5 If you wish to have some of the testimony
6 repeated, you may make that request to the marshal
7 and I will call you back into the courtroom, have
8 the reporter locate those portions in the transcript,
9 and have them read back to you.

10 When you retire to the juryroom, your first
11 duty will be to elect your foreman or forelady, who
12 will preside over your deliberations. During your
13 deliberations, you should assume the attitude of
14 judges of the facts rather than as partisans or
15 advocates. In that way, you will be making a high
16 contribution to the administration of justice.

17 You must report a verdict on all counts of the
18 indictment. On each count you may find the defendant
19 either guilty or not guilty, and the verdict in each
20 case must be unanimous.

21 The marshal will be available outside the jury-
22 room to report when you have reached a verdict or
23 to let the Court know if there are any questions which
24 you wish to have answered.

25 When you have reached a verdict, ready to report,

1
2 simply advise the marshal, but do not disclose to him
3 what your verdict is. I will have your foreman
4 announce it orally back here in the courtroom.

5 There will be a short recess, during which
6 counsel will review the charge with me to make certain
7 that I have made no omissions or have not misstated
8 any portion of it. There will be a short recess, but
9 please retire to the juryroom, but do not yet discuss
10 the case until I call you back here once more.

11 (Jury leaves courtroom)

12 (Continued on next page)
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T4AM
IG:KG

(jury not present).

THE COURT: Are there any requests or exceptions that have not previously been ruled on?

MR. BRODSKY: No. I think the Court covered everything in the charge very well.

THE COURT: Ms. Walker?

MR. BAILEY: Yes.

With respect to the early part of the charge you told the jury that the Government and the defendant agrees that with respect to the years after '69--70 through '74 the income was attributable to the corporation or words to that effect. I'm not sure you used the word "attributable", but that the income goes to the corporation.

You said with respect to 1969 that the Government contends --

THE COURT: Part of the year.

MR. BAILEY: Was attributable to the defendant individually. You didn't charge that the defendant contends that was still attributable to the corporation.

THE COURT: Even before the corporation owned the property?

MR. BAILEY: Yes.

MR. BRODSKY: I never heard that contention.

THE COURT: I never heard any contention with

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respect to that particular block of income.

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THE COURT: I didn't but I'll charge the jury as to that.

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MR. BAILEY: With regard to loans to Olga Defreitas, that wasn't covered by your charge at all. There was no mention of her name.

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THE COURT: You are correct. Are they extensive in amount?

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MR. BAILEY: Three or four thousand a year.

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THE COURT: None of this developed throughout the course of the testimony. There was vague reference to names and not --

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MS. WALKER: It was in the evidence.

14

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THE COURT: You are correct. I'll add that with respect to my charge on loans. You say that's about three or four thousand dollars total?

16

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MR. BAILEY: No, a year.

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MS. WALKER: The documents, exhibits J through N, specifically indicate --

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MR. BRODSKY: I would request if they want an instruction about loans without mentioning names or amounts your Honor could refer them to J through N which they contend the categorization has been made. It's certainly been our contention that Mr. Kladerman prepared those work sheets solely from what Mr. Ruffin

3 1 told them and I think they are entitled to have the
2 jury's attention drawn to the work sheets but not to
3 say hat Olga Defreitas received loans.

4 THE COURT: What I will do is I will do both.

5 I pinpointed the 1410 loans since the Defreitas
6 payments are obviously a substantial amount, I'll
7 pinpoint them and refer the jury to Exhibits J through
8 N which include a summary of the defendant's contentions
9 as to what payments are loans.

10 MR. BAILEY: Fine, your Honor.

11 Also, your Honor, the defendant excepts to your
12 not mentioning that along with negligence or gross
13 negligence, careless disregard of the law is not
14 enough. I read the Pompioni case -- if that's
15 the proper pronunciation -- and I don't think the
16 Court there was putting into criminal behavior or
17 responsibility careless disregard of the loan.

18 THE COURT: All right. Your exception is noted.

19 MS. WALKER: Your Honor, I don't recall the
20 exact wording of it, but the way that the Court
21 charged on the question of cooperation and how the
22 jury is to interpret that --

23 THE COURT: I said they could weigh that among
24 other factors in determining intent.

25 MS. WALKER: I didn't hear that last part.

4 1 Now, there was -- the Court's charge with
2 respect to the inference to be drawn as to signing of
3 the tax returns, we respectfully except to that in
4 view --

5 THE COURT: That's a provision in the Internal
6 Revenue Code if I'm not mistaken -- specifically --
7 if your name is on the return you are presumed to know
8 what's in it.

9 MR. BRODSKY: Exactly.

10 MS. WALKER: Except we are now talking about
11 a criminal responsibility and an inference being made
12 merely because one's name is signed that it is basis
13 to draw criminal intent.

14 THE COURT: Well, your exception is noted.

15 MS. WALKER: The defendant would request that
16 the Court charge the jury since particularly there has
17 been a lot made of the gross amount -- the law in
18 the criminal case we are talking about failure to
19 report taxable income -- as to where a substantial
20 amount of tax is due. It's not the amount of the
21 gross that makes criminal liability.

22 Obviously, there was much argument in this
23 case as to the gross amount the law as to criminal
24 liability is based upon the taxable income.

25 THE COURT: I don't know how I can make it any

5 1 clearer than I did. I'm not going to try. If I have
2 failed, it's too bad.

3 MS. WALKER: Respectfully except.

4 THE COURT: Yes.

5 MS. WALKER: Your Honor, with respect to the
6 charge as to the criminal and civil liability,
7 the defendant respectfully requests the Court charge
8 that if there is doubt as to criminal liability as
9 against civil liability it is their determination
10 as to the criminal liability that governs in this
11 criminal case.

12 MR. BRODSKY: I think that's well-covered.

13 THE COURT: I would not make that charge. I've
14 instructed them not to consider civil liability at
15 all.

16 Any others?

17 MS. WALKER: No others, your Honor.

18 THE COURT: All right. Bring in the jury.
19 Since we have lost one juror we will have to -- that's
20 all right. We don't select anyway. It's Number 13
21 that goes. What's his name?

22 MR. BRODSKY: Mr. Defasio.

23 THE COURT: All right.

24 MS. WALKER: Did the Court say -- I don't
25 recall whether it was in another matter -- that the --

* * *

COURT OF APPEALS
SECOND CIRCUIT

UNITES STATES OF AMERICA,
Appellee,

- against -

WILLIAM M. RUFFIN,
Defendant-Appellant.
On Appeal from a Judgment of Conviction of the
United States District Court for the Southern Dist. of
New York.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF

SS.:

I, Reuben A. Shearer, being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at 211 West 144th Street, New York, New York 10030.

That on the 3rd day of June, 19 77 at ~~One St. Andrews Plaza~~
~~225 Cadman Plaza N~~ New York, N.Y.

deponent served the annexed

Brklyn N.Y.

~~U.S. Atty So. Dist.~~
Robert Fiske

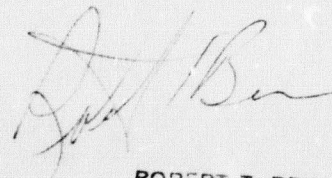
upon

the in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the herein,

Sworn to before me, this 3rd
day of June, 19 77



Reuben A. Shearer


ROBERT T. BRIN
NOTARY U.S.C. State of New York
No. 31 018930
Qualified in New York County
Commission Expires March 30, 1979

